

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)

- - - - - x  
:  
In re: : Case No. 10-16505-RGM  
:  
RMAA REAL ESTATE HOLDINGS, : (Chapter 11)  
:  
L.L.C., :  
:  
Debtor. :  
:  
- - - - - x

Wednesday, August 11, 2010  
U.S. Bankruptcy Court  
Alexandria, Virginia

The above-entitled matter came on to be heard  
before THE HONORABLE ROBERT G. MAYER, Judge in and for  
the United States Bankruptcy Court, 200 South  
Washington Street, for the Eastern District of  
Virginia, Alexandria Division, beginning at 12:28 p.m.

Diversified Reporting Services, Inc.  
(202) 467-9200

APPEARANCES:

On behalf of the Debtor:

JOHN P. FOREST, ESQUIRE

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(703) 352-1300

On behalf of the Creditor Access National Bank:

KEVIN M. O'DONNELL, ESQUIRE

JEFFERY T. MARTIN, ESQUIRE

Henry O'Donnell Dahnke & Walther, PC

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Fairfax, Virginia 22030

(703) 273-6884

C O N T E N T S

WITNESS:	DIRECT	CROSS	REDIRECT
Daniel Harvill	11	50	54
Robert Shoemaker	58	76	--
Gilbert Rogers	86	--	--
Brett Amendola	92	117	--

E X H I B I T S

RECEIVED

Movant's Exhibit No. 1 - Promissory Note Between borrowers and Access National Bank	60
Movant's Exhibit No. 2 - Deed of Trust of Access National Bank securing Construction Loan Rider	--
Movant's Exhibit No. 3 - Payoff Statement Of Access National Bank, 8/4/10	38
Movant's Exhibit No. 4 - Second Deed of Trust for \$1,000,000	--
Movant's Exhibit No. 5 - Payoff Statement From Warren R. Stein	--
Movant's Exhibit No. 6 - Copies of Recorded Liens on Title	34
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Movant's Exhibit No. 8 - Notice of Trustee Sale on 5/8/09	16

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RECEIVED

Movant's Exhibit No. 9 - U.S. Bankruptcy Court docket containing case of Janet Amendola, item 26	16
Movant's Exhibit No. 10 - Lift Stay Order Of U.S. Bankruptcy Court re: Janet Amendola	17
Movant's Exhibit No. 11 - Notice of Substitute Trustee Sale on 7/17/09	19
Movant's Exhibit No. 12 - U.S. Bankruptcy Court docket containing case of Brevon Developers, Inc.	20
Movant's Exhibit No. 13 - Fax from Azarcon To Harvill re: Trustee sale on 7/17/09	58
Movant's Exhibit No. 14 - Notice of Substitute Trustee Sale on 7/31/09	22
Movant's Exhibit No. 15 - U.S. Bankruptcy Court docket containing case of Roger Amendola, item 19	23
Movant's Exhibit No. 16 - Notice of Substitute Trustee Sale on 10/5/09	25
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E X H I B I T S (Continued)

RECEIVED

Movant's Exhibit No. 22 - Involuntary Bankruptcy Petition by RMAA, 6/22/10	28
Movant's Exhibit No. 23 - Notice of Substitute Trustee Sale on 8/3/10	30
Movant's Exhibit No. 24 - Involuntary Bankruptcy Petition by RMAA, 8/3/10	30
Movant's Exhibit No. 25 - Judge Mitchell's Order of Dismissal of Involuntary Petition by RMAA	29
Defendant's Exhibit A - Contract	80, 101
Defendant's Exhibit B - Statement Of Brett Amendola	117

1 P R O C E E D I N G S

2 MR. O'DONNELL: Good afternoon, Your Honor,  
3 Kevin O'Donnell and Jeff Martin on behalf of Access  
4 National Bank and I have my client's representative  
5 Robert Shoemaker present with me today.

6 MR. FOREST: Good morning, Your Honor, John  
7 Forest for the petitioning Creditors. Present with me  
8 is Brett Amendola, one of the petitioning Creditors.

9 THE COURT: How much time do you all expect  
10 you need?

11 MR. O'DONNELL: Your Honor, it's over an hour.  
12 It might be 90 minutes, would be my guess. I have  
13 three witnesses. I'm going to run through them quickly  
14 but I have exhibits that I want to present to the Court  
15 because this involves a history of conduct --

16 THE COURT: That's fine. I just needed an  
17 estimate. Do you agree with that or?

18 MR. FOREST: Well, I understand that, Your  
19 Honor. The difficulty I have -- I shouldn't say the  
20 difficulty -- the one question I have is what exactly  
21 are we going to be addressing today?

22 I gathered from Mr. O'Donnell's comments that  
23 he wants to have the preliminary and the final hearing.  
24 My particular concern is that we've had some difficulty  
25 getting an appraisal of the property.

1 I would just make a proffer to the Court that  
2 we have an appraisal that is one year old. We don't  
3 have the appraisal here that shows the property being  
4 worth \$5.2 million.

5 We have a contract that was entered into and  
6 ratified, I believe in late April.

7 THE COURT: Understood. I read your papers.  
8 What is the debt on the property?

9 MR. FOREST: The debt is around 2.1 and some  
10 change, might be 2.2.

11 MR. O'DONNELL: That's entirely incorrect,  
12 Your Honor. Mr. Forest --

13 THE COURT: I don't need you to argue it.  
14 What's your view of the debt?

15 MR. O'DONNELL: The debt to my client is  
16 approximately \$2.3 million, slightly under that,  
17 \$2.25 --

18 THE COURT: Is there a subordinate?

19 MR. O'DONNELL: And there is a second trust on  
20 the property that has a principal amount owed of  
21 \$1,000,000 and the last payoff we had from them was in  
22 excess of \$4,000,000. That payoff came approximately  
23 60 days ago.

24 THE COURT: That's quite a --

25 MR. O'DONNELL: It was a hard money loan, Your

1 Honor, that accrued interest at five percent per month.  
2 It has not been serviced. It has accrued since it  
3 originated --

4 THE COURT: All right, so your view is that,  
5 if you take the papers at their face value it's over  
6 \$5,000,000 -- actually over \$6,000,000?

7 MR. O'DONNELL: That's correct, and we have  
8 valuation testimony that would substantially alter Mr.  
9 Forest's representation.

10 There are also, Your Honor, and we believe  
11 more importantly alternative grounds for relief other  
12 than (D) (2) we filed under (D) (1) for cause including  
13 bad faith filing and most importantly under (D) (4), 362  
14 because we believe that this filing and represented  
15 that this filing was part of a pattern of conduct meant  
16 to delay, hinder, or defraud access that involved prior  
17 filings with respect to this property.

18 THE COURT: What I want to do is go to lunch  
19 because, especially if you're going to be an hour and a  
20 half I don't want to break you in the middle of that.  
21 I think it's better for the presentation to do the  
22 whole thing from beginning to end.

23 I've got a matter also at 2:00. I don't know  
24 how long that's going to take but I think I can  
25 accommodate both of you today. It's just a question,



1 are you involved in that?

2 MR. MARTIN: Yes, Your Honor, the matter at  
3 2:00 is my matter for a separate client. I anticipate  
4 that that will take, optimistically an hour, possibly  
5 an hour and a half.

6 THE COURT: So I think I can get you both in.

7 MR. O'DONNELL: Let me address one thing. My  
8 first witness, Your Honor, is an attorney and member of  
9 the bar Daniel Harvill. I expect he will take upwards  
10 of 30 minutes. He had a prior commitment and was  
11 supposed to be on the road towards that by about 1:30. I  
12 know we don't like to split this up and that's not my  
13 desire to do so but I wonder if we could put him on the  
14 stand now and take his testimony.

15 THE COURT: Where is the commitment?

16 THE WITNESS: I have a meeting in Vienna at  
17 2:00 for trial preparation.

18 THE COURT: For tomorrow's trial?

19 THE WITNESS: Yes.

20 THE COURT: All right, we can do that. We can  
21 just push the 2:00 back to a little later than that.

22 MR. O'DONNELL: I told Mr. Martin that I had  
23 seniority today and that his matter would be below mine  
24 on the docket no matter what happened so he's already  
25 been advised of that, Your Honor. He's okay with it.

1 MR. FOREST: Your Honor, I have a matter at  
2 1:30 with Judge Mitchell. It was a contested  
3 confirmation hearing and he's going to be --

4 THE COURT: How long is that going to take?

5 MR. FOREST: I wanted to say that he's going  
6 to be issuing his ruling so I want to bring that to the  
7 Court's attention but I can't imagine that's going to  
8 materially interfere.

9 THE COURT: You need to be down there at 1:30.  
10 We'll go to 1:00 and we'll take lunch or something and  
11 you can be downstairs at 1:30. I don't see that as a  
12 conflict on that.

13 As far as this goes this is a motion for  
14 relief from stay. It is a preliminary hearing and we  
15 need to proceed on that.

16 You may get final relief based on the type of  
17 the testimony and the gravity of it but because it's  
18 also on an expedited if it appears that there may be  
19 need for additional time to prepare.

20 I'd take that into account so be prepared to  
21 argue your entire case as best you can because I may  
22 combine it with the final depending on what I find, or  
23 I may not if it would be unfair on an expedited basis  
24 to do that.

25 I don't know the evidence so I can't tell you.

1 MR. O'DONNELL: I understand, Your Honor.

2 THE COURT: But if you're prepared to go  
3 forward let's take the first witness. We'll take a  
4 break after that and then we'll come back and figure  
5 out what we want to do on the rest of them.

6 All right, do you have some exhibits here?

7 MR. O'DONNELL: Your Honor, I do. I have two  
8 copies for the Court and the witness. These are two  
9 separate copies. Your Honor, I will reserve our  
10 argument for final in order to be able to get this  
11 moving. I call Daniel Harvill.

12 THE COURT: All right, Mr. Harvill, will you  
13 come forward, please? Come to the Clerk's desk to be  
14 sworn.

15 Whereupon,

16 DANIEL HARVILL

17 was called as a witness on behalf of the  
18 Creditor and, having been first duly sworn, was  
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. O'DONNELL:

22 Q State your name and address, please.

23 A Daniel Harvill; one of my office addresses is  
24 2740 Chain Bridge Road, Vienna, Virginia 22181. My  
25 other office address is 9403 Grant Avenue, Suite 202,

1 Manassas, Virginia 20110.

2 **Q And your occupation, Mr. Harvill?**

3 A I'm an Attorney practicing in Virginia and  
4 Maryland.

5 **Q When were you admitted to practice in**  
6 **Virginia?**

7 A Admitted to Virginia in 2003, admitted to  
8 Maryland in 2003.

9 **Q Describe generally the nature of your**  
10 **practice?**

11 A I have a general practice but I focus very  
12 heavily on real estate, real estate litigation, real  
13 estate transactions, real estate foreclosures,  
14 foreclosure defense of those litigating, real estate on  
15 behalf of borrowers.

16 I also do other areas of law as well.

17 **Q Did there come a time when you were engaged by**  
18 **Access National Bank with respect to real property**  
19 **located at 18688 Riverlook Court in Leesburg, Virginia?**

20 A I was engaged by Access National Bank to act  
21 as the Trustee for the foreclosure of that property.

22 **Q Would you describe the circumstances and the**  
23 **requirements of that engagement?**

24 A The engagement, I believe it was entered into  
25 in December 2008. The file was transferred to me for

1 review. I reviewed it, came up with any red flags,  
2 ordered the title search.

3 The nature of the engagement between Access  
4 National Bank and I as far as compensation is either an  
5 hourly or if the sale price is sufficient to have a  
6 commission.

7 **Q You were instructed to commence foreclosure**  
8 **proceedings, right?**

9 A I was.

10 **Q And would you tell me briefly the steps that**  
11 **you take in preparation for commencement of that**  
12 **foreclosure?**

13 A First you make sure the bank has an original  
14 of the promissory note. You also have, you want to get  
15 a soldiers and sailors affidavit and make sure that the  
16 borrower is not a member of the armed services.

17 You do a title search, of course, review the  
18 title, look for any liens' issues. You need the title  
19 search both to provide notices to the junior lien  
20 holders as well as to ensure that you know the status  
21 of title, see if there are any superior liens to your  
22 lien, and whether those have to be taken into account.

23 And then from there you send notices to the  
24 borrowers under the Fair Debt Collection Practices Act  
25 and then also from there you have notices required

1 under Virginia law for the actual foreclosure sale  
2 itself.

3 Q And you undertook all of those actions with  
4 respect to the potential foreclosure or proposed  
5 foreclosure of this property?

6 A I did.

7 Q And when I refer to the "property" I am  
8 referring specifically to 18688 Riverlook Court; do you  
9 understand that?

10 A Yes, sir, that's the property.

11 Q Very good. You have a set of exhibits in  
12 front of you. I would ask you briefly to open that and  
13 turn to Exhibit number eight.

14 A I have it.

15 Q Can you describe that exhibit to the Court?

16 A That was the notice of Trustee sale from May  
17 8th, 2009 at 3:45 on this property.

18 Q And what that in fact the first attempt to  
19 foreclose on this property?

20 A It was not the first attempt. There had been  
21 a previous foreclosure scheduled but there had been a  
22 work-out between the bank and the borrower. This is  
23 the first one that was going to go forward.

24 Q Did it in fact go forward on May 8th of 2009?

25 A It did not.

1           **Q     Can you tell me why not?**

2           A     I received information that Janet Amendola,  
3     one of the title holders at that time had declared  
4     bankruptcy.

5           **Q     And so that I'm clear, at this point in time**  
6     **in May of 2009 who were the title holders of the**  
7     **property?**

8           A     Roger Amendola and Maureen Amendola, husband  
9     and wife as to 50 percent, Janet Amendola and Brett  
10    Amendola, husband and wife as the other 50 percent and  
11    that's by the entirety in their each respective shares.

12          **Q     And how are Brett and Janet related to Roger**  
13    **and Maureen to the best of your knowledge?**

14          A     My understanding is that Roger Amendola is the  
15    father of Brett Amendola and the father-in-law of Janet  
16    Amendola, and obviously Maureen Amendola is Roger  
17    Amendola's wife.

18          **Q     You say that this sale was stayed by virtue of**  
19    **filing a bankruptcy by Janet Amendola?**

20          A     That is correct.

21               MR. O'DONNELL: Your Honor, move Exhibit  
22    number eight.

23               MR. FOREST: Your Honor, I don't have an  
24    Exhibit eight but if the testimony was the Trustee sent  
25    notice I don't object to that evidence.

1 MR. O'DONNELL: No, Your Honor, I'll give Mr.  
2 Forest my copy. I apologize. I had these copied last  
3 night and that's, if you want to put that in your book.

4 And Your Honor, if the Court will, Exhibit  
5 number nine is the docket report for the bankruptcy  
6 case of Janet Amendola, case number 09-13498 filed on  
7 May 4th of 2009.

8 I would ask the Court to admit that by  
9 judicial notice as Exhibit nine.

10 THE COURT: Any objection to nine?

11 MR. FOREST: No objection, Your Honor.

12 THE COURT: Eight and nine are both received.

13 (The items referenced above,  
14 previously marked for  
15 identification as Movant's  
16 Exhibit Nos. 8 and 9, were  
17 received into evidence.)

18 MR. O'DONNELL: Thank you, Your Honor. I  
19 would point out that Exhibit nine identifies the docket  
20 entry 26 that the Court, this Court entered an order  
21 lifting the stay as to the property on behalf of Access  
22 National Bank on the case of Janet Amendola.

23 And Your Honor, item number 10 or Exhibit  
24 number 10 is a copy of that order as printed from the  
25 Court's docket and I move the admission of that by



1 judicial notice.

2 THE COURT: Any objection to 10?

3 MR. FOREST: No, Your Honor.

4 THE COURT: All right, 10 is admitted.

5 (The item referenced above,  
6 previously marked for  
7 identification as Exhibit  
8 No. 10, was received into  
9 evidence.)

10 MR. O'DONNELL: Thank you.

11 BY MR. O'DONNELL:

12 Q Mr. Harvill, have you seen Exhibit number 10?

13 A I have. I received that after the order was  
14 granted. I got a copy of it.

15 Q And in what context did you come to be in  
16 possession of a copy?

17 A The reason would be to move forward with the  
18 foreclosure since the stay had been lifted.

19 Q And in fact were those your instructions?

20 A They were.

21 Q Did you in fact move forward to commence or  
22 advertise yet another foreclosure?

23 A I did.

24 Q And would you look at Exhibit number 11,  
25 please? Can you tell the Court what that is?

1           A       That is a notice of substitute Trustee sale  
2       for the property setting the sale for July 17th, 2009  
3       at three p.m.

4           **Q       And in fact did that sale go off as scheduled?**

5           A       It did not.

6           **Q       Can you tell me why not?**

7           A       There was a bankruptcy filing by Brevon  
8       Developers, Incorporated.

9           **Q       Will you tell the Court please, what is Brevon**  
10       **Developers, Incorporated?**

11          A       My understanding was Brevon Developers,  
12       Incorporated was a company owned by Roger Amendola and  
13       had a relationship with Brett Amendola and I was  
14       notified of the filing and so I, basically I was  
15       notified of the filing by a fax and an angry phone call  
16       from the law office of Januario Azarcon who said he was  
17       representing Brevon Developers, Inc.

18          **Q       And you understand Brevon Developers, Inc. to**  
19       **have also been a guarantor of the obligation owed to**  
20       **Access National Bank?**

21          A       That is correct. They had signed on to some  
22       of the guarantee documents related to the debt.

23          **Q       But at least with respect to the original**  
24       **title documents Brevon was not a title owner at the**  
25       **point in time that you reviewed title, is that fair to**

1 say?

2 A That is correct. They were not a title holder  
3 though I knew that they were a company controlled by  
4 Roger so I did have some concerns that perhaps there  
5 had been a last minute deed filing since my bring-down,  
6 that the property may have been transferred into  
7 Brevon's name.

8 And basically what I did is I, out of an  
9 abundance of caution I put a hold on the sales to  
10 figure out what exactly had happened.

11 MR. O'DONNELL: Your Honor, move Exhibit 11.

12 THE COURT: All right, 11 is admitted.

13 (The item referenced above,  
14 previously marked for  
15 identification as Movant's  
16 Exhibit No. 11, was received  
17 into evidence.)

18 MR. O'DONNELL: Your Honor, Exhibit 12 is the  
19 bankruptcy docket sheet printed from this Court's  
20 docket for Brevon Developers, Inc., case number  
21 09-15677 that was a case before you. Move that by  
22 judicial notice.

23 THE COURT: Any objection?

24 MR. FOREST: None, Your Honor.

25 THE COURT: Twelve is received.

1 (The item referenced above,  
2 previously marked for  
3 identification as Movant's  
4 Exhibit No. 12, was received  
5 into evidence.)

6 MR. O'DONNELL: Thank you, Your Honor. I  
7 would point out that the docket report indicates that  
8 the case was dismissed for failure to file schedules.

9 BY MR. O'DONNELL:

10 Q Would you look at Exhibit 13, Mr. Harvill, and  
11 describe that exhibit?

12 A This appears to be the fax I received from Mr.  
13 Azarcon's office concerning the bankruptcy of Brevon.

14 Q And this was delivered to you prior to the  
15 foreclosure sale that was scheduled for that date?

16 A It was.

17 Q What does it tell you with respect to that  
18 foreclosure sale?

19 A It says, "please stop all foreclosure sale  
20 actions to the above property immediately."

21 Q You indicated a moment ago that you received a  
22 call. Would you describe what the nature of that call  
23 was?

24 A There was a call from a paralegal with Mr.  
25 Azarcon's office saying that this bankruptcy had been

1 filed. I checked Pacer which is the way we usually  
2 double check to see if anything was filed.

3 I could not find the filing in Pacer. I told  
4 him that if I didn't have notice or copies of  
5 something, if I couldn't confirm what was on this fax I  
6 would pursue the sale and that person became very angry  
7 and threatening towards me and I don't remember the  
8 exact words.

9 I just remember it was a very threatening  
10 phone call so I did some more checking and got some  
11 copies and halted the sale.

12 **Q What effect did this particular fax have upon**  
13 **your decision to halt the sale?**

14 A Basically it got me checking. It got me  
15 checking to see if there was a bankruptcy filing and  
16 basically what I was very concerned about was that  
17 there might have been some kind of deeding of the  
18 property at the last minute.

19 I was very concerned with the fact that they  
20 were the guarantor and better safe than sorry. I did  
21 not want to step on the Court's stay if it did take  
22 effect so I basically postponed the sale at that point  
23 to get more information.

24 **Q Did you later undertake any investigation to**  
25 **determine whether or not Brevon Developers was in the**

1 chain of title?

2           A       I did. I had a bring-down run and they were  
3   not in the chain of title and it did not appear that it  
4   affected their estate so we decided to move forward  
5   with the foreclosure again.

6 Q So did you schedule yet another attempt to  
7 foreclose on behalf of Access National Bank?

8                    A        Yes.

9 Q Would you look at Exhibit 14 for a moment,  
10 please?

11           A       Yes, sir. That is the notice of foreclosure  
12    sale for July 31st at 11 a.m. You'll notice it's only  
13    14 days after the previous one.

14 Q And were you able to effect and complete that  
15 foreclosure sale?

16           A       I was not.

17 Q Can you tell the Court why not?

18           A     As I recall Roger Amendola then filed  
19     bankruptcy.

20 MR. O'DONNELL: Your Honor, move Exhibit 14.

21 THE COURT: Fourteen is admitted.

22 (The item referenced above,  
23 previously marked for  
24 identification as Movant's  
25 Exhibit No. 14, was received

1 into evidence.)

2 MR. O'DONNELL: Your Honor, Exhibit 15 is the  
3 bankruptcy docket sheet for the case of Roger Amendola,  
4 case 09-16151 as printed from the docket of this Court.  
5 Move admission by judicial notice.

6 THE COURT: Any objection?

7 MR. FOREST: No, Your Honor.

8 THE COURT: Fifteen is received.

9 (The item referenced above,  
10 previously marked for  
11 identification as Movant's  
12 Exhibit No. 15, was received  
13 into evidence.)

14 MR. O'DONNELL: I would point out also that  
15 the docket indicates that the case of Roger Amendola  
16 was dismissed for failure to file schedules, Your  
17 Honor. That is at docket entry number 19.

18 BY MR. O'DONNELL:

19 Q Can you tell me please what happened after  
20 that, Mr. Harvill?

21 A Again, the property came up for foreclosure.  
22 I believe there was a motion from relief from stay, I  
23 believe, and it came up for foreclosure again.

24 Q Can you tell me, please, would you look at  
25 Exhibit 16 and describe that to the Court?

1           A       This is the notice of substitute Trustee sale  
2       for a sale that was scheduled for October 5th, 2009 at  
3       2:30 p.m.

4           **Q       Did that sale complete or commence?**

5           A       It did not.

6           **Q       And can you tell the Court why?**

7           A       As I understand it and as I know the borrowers  
8       did another work-out with Access National Bank. It  
9       was, as I understand the terms of it, there was some  
10      payment made and then there was also an agreement  
11      between the parties as to the titling of the property.

12          **Q       And when you say an agreement with respect to**  
13      **titling of the property, what did you understand that**  
14      **agreement to be?**

15          A       The drafts of the agreements I saw re-titled  
16      the property into the name of RMAA Real Estate  
17      Holdings, LLC or as it was called in those documents,  
18      Newco, the idea being they were going to put it into a  
19      special purpose entity to hold title of the property.

20               Access National Bank was going to be a manager  
21      of that entity and the unanimous consent of all  
22      managers would be required to file any further  
23      bankruptcy proceedings.

24          **Q       So based upon that this October 5th sale was**  
25      **continued or called off?**



1           A     I postponed the sale indefinitely based on  
2     that work-out.

3                   MR. O'DONNELL: Your Honor, move admission of  
4     Exhibit number 16.

5                   THE COURT: Sixteen is received.

6                   MR. FOREST: No objection.

7                                   (The item referenced above,  
8                                   previously marked for  
9                                   identification as Movant's  
10                                  Exhibit No. 16, was received  
11                                  into evidence.)

12                   BY MR. O'DONNELL:

13           **Q     Did that end your involvement, Mr. Harvill?**

14           A     For several months, yes.

15           **Q     What happened after those several months**  
16     **expired?**

17           A     I received a call from Bob Shoemaker with  
18     Access National Bank instructing me that the borrowers  
19     had not abided by their agreements and that they wanted  
20     to foreclose again, and we began foreclosure  
21     proceedings again.

22           **Q     That was after the beginning of this year?**

23           A     It was. It was in February or March of this  
24     year.

25           **Q     Would you look at Exhibit number 20 in the**

1     **book in front of you and describe that to the Court?**

2           A     This is a notice of substitute Trustee sale  
3     for a sale to be conducted on May 24th, 2010 at two  
4     p.m.

5           Q     **And can you tell me, please, did you complete**  
6     **that foreclosure sale?**

7           A     We actually did manage to complete that  
8     foreclosure sale.

9           Q     **And when you say "complete" it what do you**  
10    **mean by complete it?**

11          A     I called the sale on the courthouse steps. We  
12    received bids. We received a high bid. We executed a  
13    memorandum of sale and we set a settlement date of June  
14    8th, 2010.

15          Q     **Tell me, please, what happened with respect to**  
16    **that bid, who it was made by and what ultimately**  
17    **occurred?**

18          A     The bid was made by 18688 Riverlook LLC who  
19    was represented to be a limited liability company  
20    information. There were represented by an attorney by  
21    the name of Tom Wiltshire who appeared at the sale with  
22    a cashier's check from his law firm bank account  
23    essentially, and he signed and executed the contract  
24    related to that foreclosure sale.

25                   Shortly after we executed the contract it was

1 revealed to me that one of the principals of that was  
2 Roger Amendola.

3 **Q One of the?**

4 A One of the principals of the 18688 Riverlook  
5 entity information was going to be Roger Amendola.

6 **Q What happened with respect to that foreclosure**  
7 **sale? Were you able to complete that and close on that**  
8 **transaction?**

9 A We were not. They defaulted on the contract.  
10 The memorandum of sale signed out. The foreclosure  
11 sale, they defaulted on it and were not able to close  
12 by June 8th, 2010 so I declared the contract in default  
13 and re-noticed it for another sale.

14 **Q Would you look at Exhibit number 21, please,**  
15 **and describe that briefly to the Court?**

16 A That is the next foreclosure sale. That was  
17 the sale scheduled for June 23rd, 2010 at two p.m.

18 **Q Were you able to complete that foreclosure**  
19 **sale?**

20 A I was not.

21 **Q Can you tell the Court why not?**

22 A There was an involuntary bankruptcy petition  
23 filed against RMAA Real Estate Holdings, then current  
24 title holding entity and I was notified of this by Mr.  
25 Forest.

1 MR. O'DONNELL: Your Honor, move Exhibits 20  
2 and 21.

3 THE COURT: Twenty and 21 are received.

4 (The items referenced above,  
5 previously marked for  
6 identification as Movant's  
7 Exhibit Nos. 20 and 21 were  
8 received into evidence.)

9 MR. O'DONNELL: Your Honor, Exhibit number 22  
10 is a copy of the Involuntary Petition filed in case  
11 number 10-15244-SSM on behalf of RMAA Real Estate  
12 Holdings, LLC. This is not the incident case that's  
13 before the Court.

14 This was an involuntary petition filed on June  
15 22nd of this year by many of the same petitioners,  
16 however in their capacity as members and identifying  
17 the entity as a partnership rather than a corporation.

18 I would ask the Court to admit that by  
19 judicial notice.

20 THE COURT: Any objection?

21 MR. FOREST: None, Your Honor.

22 THE COURT: Twenty-two is received.

23 (The items referenced above,  
24 previously marked for  
25 identification as Movant's

1 Exhibit No. 22 and 25, were  
2 received into evidence.)

3 MR. O'DONNELL: Thank you, Your Honor. Your  
4 Honor, I would also move the admission of Exhibit  
5 number 25 which is Judge Mitchell's order dismissing  
6 case number 10-15244 and holding that there was no  
7 authority by the members to effect the filing of an  
8 involuntary petition on behalf of an LLC.

9 MR. FOREST: No objection as to the order,  
10 Your Honor.

11 MR. O'DONNELL: Thank you.

12 THE COURT: Twenty-five will be received.

13 BY MR. O'DONNELL:

14 **Q Mr. Harvill, you're aware that that case was**  
15 **subsequently dismissed by this Court; is that correct?**

16 A I am. I saw the order myself on Pacer.

17 **Q And after that did you then recommence**  
18 **foreclosure proceedings again?**

19 A I did.

20 **Q And would you look at Exhibit number 23?**

21 A That is a notice of substitute Trustee sale.  
22 The sale date for that was August 3rd, 2010 at two p.m.

23 **Q Can you tell the Court what happened with**  
24 **respect to that particular foreclosure sale?**

25 A Once again it did not go through because of

1 the filing of the involuntary petition in the incident  
2 case that we're here for today.

3 MR. O'DONNELL: Move Exhibit number 23, Your  
4 Honor.

5 THE COURT: Any objection?

6 MR. FOREST: None, Your Honor.

7 THE COURT: Twenty-three is received.

8 (The item referenced above,  
9 previously marked for  
10 identification as Movant's  
11 Exhibit No. 23, was received  
12 into evidence.)

13 MR. O'DONNELL: Thank you, and I would move 24  
14 which is a copy of the involuntary petition filed at  
15 1:07 p.m. on the date of August 3rd.

16 MR. FOREST: No objection.

17 THE COURT: I'll receive 24.

18 (The item referenced above,  
19 previously marked for  
20 identification as Movant's  
21 Exhibit No. 24, was received  
22 into evidence.)

23 MR. O'DONNELL: Thank you, Your Honor.

24 BY MR. O'DONNELL:

25 Q Mr. Harvill, are you familiar with the status

1 of the record of title on this property?

2 A I am.

3 Q Would you describe your professional  
4 experience in the area of conducting title  
5 examinations --

6 MR. FOREST: Your Honor, I don't know that the  
7 witness' testimony is, with regard to an expert makes  
8 him entitled to be pertinent to the issue.

9 MR. O'DONNELL: I'm going to move him as an  
10 expert, Your Honor.

11 THE COURT: What are you trying to show?

12 MR. O'DONNELL: I'm going to have him testify  
13 as to documents of record, Your Honor, and the Loudoun  
14 County land records specifically memoranda of  
15 mechanic's liens and judgment liens and the deeds of  
16 trust and their effect on the state of title with  
17 respect to this property.

18 THE COURT: What exhibits are those?

19 MR. O'DONNELL: We will begin, Your Honor,  
20 with Exhibit number two which is the deed of trust for  
21 Access National Bank. I would think that Mr. Forest  
22 would simply stipulate to that.

23 That is the deed of trust of record that  
24 evidences the lien in favor of Access. Exhibit number  
25 four, which is the deed of trust in favor of the second

1 trust holder again with the face amount of that  
2 instrument being \$1,000,000.

3 Exhibit number six, which is the abstract of  
4 the title report during the first six pages and then  
5 after that, copies of all of the recorded instruments  
6 to which that abstract refers and that is memorandums  
7 of liens of mechanic's liens, judgment liens, and other  
8 matters of record that affect title to the property.

9 Specifically, Your Honor, I expect to qualify  
10 Mr. Harvill as an expert in the area of title  
11 examination and the ability to provide opinion  
12 testimony as to the effect on documents of record upon  
13 title to this property, and I'm going to have him  
14 identify those documents and advise the Court with  
15 respect to his personal review of these matters of  
16 record as late as August 3rd as of the current status  
17 of title.

18 THE COURT: Do you object to the Exhibits two,  
19 four, or six?

20 MR. FOREST: Your Honor, I don't object to  
21 two. I don't object to four. I'm looking at six now.

22 MR. O'DONNELL: The only thing that's not a  
23 matter of record out of Loudoun County, Your Honor, are  
24 the first six pages which are just the abstract report  
25 that was delivered to Mr. Harvill.



1 THE COURT: Mr. Harvill did not do the  
2 abstract himself?

3 MR. O'DONNELL: He did not do it. He would  
4 testify, Your Honor, that he has had bring-downs, he  
5 had personally conducted bring-downs.

6 THE COURT: We are just looking at the  
7 evidentiary basis for that. Six, is there?

8 MR. FOREST: Your Honor, I don't object to the  
9 matters that on their face show that they're recorded  
10 in the land records but subject of course to Mr.  
11 Amendola's ability to testify that perhaps some of  
12 these have been satisfied or some of the claims may be  
13 time barred.

14 But in terms of their introduction I don't  
15 object to that. I do have concerns about the title  
16 report because the title report sets forth, presumably  
17 if it's correct it would set forth conclusions that are  
18 based upon the documents --

19 THE COURT: You are agreeable to all the pages  
20 except the first six?

21 MR. FOREST: Yes.

22 THE COURT: All right, I'll admit Exhibit six,  
23 everything except the first six pages, and go ahead  
24 with your examination.

25 //

1 (The document referenced  
2 above, previously marked as  
3 Movant's Exhibit No. 6, was  
4 received into evidence.)

5 MR. O'DONNELL: Thank you, Your Honor.

6 BY MR. O'DONNELL:

7 **Q Would you describe, please, your professional**  
8 **expertise in the area of conducting title examinations?**

9 A I've been doing real estate law since I was  
10 admitted to the bar. It was actually before I was  
11 admitted to the bar, I was a Real Estate Title Agent  
12 for a title company in Vienna and I reviewed titles as  
13 a Title Agent and had to give opinions of title in that  
14 capacity.

15 Once I was admitted to the bar I continued to  
16 do title work as a Real Estate Settlement Attorney and  
17 I would have to review title searches before each  
18 closing, residential and commercial refinance and  
19 purchase closings that I would handle.

20 For each one of those I would have to review  
21 title just before they were done, do a final review. I  
22 would have to review title abstracts. I would often do  
23 bring-downs. I was the person in my law firm primarily  
24 responsible for doing post-closing bring-downs to make  
25 sure that certain things had been cleared off record of

1 title.

2 I would say that I've handled over 3,000  
3 residential and commercial refinance and purchase  
4 transactions if I had to estimate. I have handled  
5 literally thousands of bring-down title searches.

6 I have handled probably hundreds of full title  
7 searches and I do routine title searches as part of  
8 both my real estate litigation practice as well as my  
9 real estate transaction practice.

10 **Q And in the context of all of that do you**  
11 **routinely offer opinions as to the effect on title of**  
12 **documents of record?**

13 A Every closing that I've handled, every  
14 settlement I have to have an opinion of title before I  
15 walk into the settlement as to whether it's clear and  
16 whether the bank or whether the deeds can be recorded  
17 without clouds on title, whether the liens can be  
18 recorded without clouds on title.

19 So that's for every settlement I've handled I  
20 am required to have an opinion of title.

21 **Q With respect to the foreclosure in this**  
22 **particular case have you also undertaken a review of**  
23 **title and a review of the instruments of record that**  
24 **affect title?**

25 A I have. I usually, for my first title search

1 when I do a foreclosure, I get it done by a title  
2 abstractor as a baseline. I double check their work.

3 I then also, before any, if a sale is  
4 postponed for any reason I go and do bring-downs to  
5 update myself as to what the status of title is, see if  
6 anything recent has been filed and that is routine  
7 practice.

8 MR. O'DONNELL: Your Honor, I move Mr. Harvill  
9 as an expert in the area of title examinations and the  
10 effect of documents of record upon title.

11 I think a lot of his testimony will be factual  
12 in nature but I will ask him to opine about the effect  
13 of record instrument upon the title of this property  
14 and so for that reason I would move his admission as an  
15 expert or qualification of an expert.

16 MR. FOREST: Your Honor, the only objection I  
17 have is that this witness is not going to -- I doubt  
18 that this witness is going to be testifying as to  
19 matters the Court is not capable of understanding  
20 independently of his testimony.

21 THE COURT: I'm going to allow him as an  
22 expert. I'm not quite sure what he's going to opine on  
23 but he's certainly an expert within the fields that Mr.  
24 O'Donnell has suggested here.

25 MR. O'DONNELL: Thank you, Your Honor.

1 BY MR. O'DONNELL:

2 Q Mr. Harvill, in the book in front of you would  
3 you look at Exhibit number two briefly?

4 A Okay.

5 Q Would you describe that to the Court?

6 A This is the deed of trust securing Access  
7 National Bank with a construction loan rider and it is  
8 the document that we're, it's the lien that we were  
9 attempting to enforce by the foreclosure sale.

10 It also has a fixed adjustable rate rider  
11 attached to the deed of trust. This is a copy of the  
12 recorded document.

13 Q And this is a lien on title to the property?

14 A It is.

15 Q And the face amount of the note secured  
16 according to this instrument?

17 A It is \$2,250,000.

18 Q In the context of preparing for foreclosure  
19 did you obtain payoff information with respect to that  
20 property?

21 A I did.

22 Q With respect to that loan. Would you look at  
23 Exhibit three for a moment and describe that to the  
24 Court if you can?

25 A This looks like the form, payoff statement

1 that Access National Bank uses. This one is dated  
2 August 4th with a total due of \$2,236,728.25 and it  
3 gives a per diem which is what, when I do a foreclosure  
4 what I need is the per diem so I can calculate the  
5 daily on the loan.

6 MR. O'DONNELL: Move Exhibit three, Your  
7 Honor.

8 MR. FOREST: No objection, Your Honor.

9 (The document referenced  
10 above, previously marked as  
11 Movant's Exhibit No. 3, was  
12 received into evidence.)

13 THE COURT: Three is admitted.

14 MR. O'DONNELL: Thank you.

15 BY MR. O'DONNELL:

16 **Q Would you look at Exhibit four and identify**  
17 **that document?**

18 A This is the second deed of trust with the  
19 beneficiary being Todd Tarring who, as I understand it  
20 is the second lien holder. It's got a face amount of  
21 \$1,000,000.

22 **Q And that also constitutes a lien on the**  
23 **property; is that correct?**

24 A It does.

25 **Q And did you obtain any payoff information with**

1     **respect to this property in preparation of the**  
2     **foreclosure?**

3           A     I did.

4           Q     **Would you look at Exhibit number five and tell**  
5     **the Court what that is?**

6           A     This is a copy of the payoff statement I  
7     received from Warren R. Stein who is the attorney  
8     representing Mr. Tarring and it sets forth the amounts  
9     that is owed on that debt as well as the interest rate  
10    which was five percent per month.

11           MR. O'DONNELL: Move Exhibit five, Your Honor.

12           MR. FOREST: Your Honor, we would object on  
13    grounds of hearsay and authentication.

14           THE COURT: Let me ask you about the hearsay  
15    on number five.

16           MR. O'DONNELL: I'm sorry?

17           THE COURT: The hearsay objection on number  
18    five.

19           MR. O'DONNELL: If I can, Your Honor, let me  
20    see if I can address is through opinion testimony of  
21    the witness for a moment if I may. If I can have a  
22    moment to make some additional inquiry before --

23           THE COURT: That will be fine. Go ahead.

24           MR. O'DONNELL: Thank you.

25           BY MR. O'DONNELL:

1           **Q     Mr. Harvill, in the context of examining title**  
2     **in connection with this transaction is it your**  
3     **responsibility to determine not just the nature of**  
4     **liens but the extent of those liens?**

5           A     It is. Particularly in a foreclosure  
6     situation what you hope happens is that the sale goes  
7     for more than the lien that you're foreclosing and then  
8     you have to, by Virginia law you have to pay money down  
9     the line, as they say, to the junior lien holders.

10           Todd Tarring was the first lien holder after  
11     Access National Bank. I had indications that the sale  
12     price of the property would exceed the lien of Access  
13     National Bank so I had to know how much money I needed  
14     to pay and to whom I needed to pay it.

15           And that is what this document -- in my  
16     practice this is the type of document I receive to  
17     inform me of that information.

18           **Q     And have you, based upon the documents of**  
19     **record and communication with note holders or lien**  
20     **holders been able to reach an opinion as to the amount**  
21     **of liability evidenced by or secured by Exhibit number**  
22     **four?**

23           MR. FOREST: Your Honor, I'm going to object  
24     because first of all, if this Trustee, the substitute  
25     Trustee is in fact foreclosing on the first he does not



1 need to reach an opinion as a part of that particular  
2 activity as to what comes afterward.

3 In the event the sale were consummated then  
4 the substitute Trustee would have some obligation to  
5 try and determine what happens with any proceeds that  
6 were left over.

7 The other objection I have, Your Honor, is  
8 that he cannot by virtue of the attempted opinion  
9 effort, testify as to facts which would not be  
10 admissible directly.

11 In other words, he can't say --

12 THE COURT: I understand. What was your  
13 question?

14 MR. O'DONNELL: Your Honor, the impact and  
15 import of my query is to solicit or elicit from Mr.  
16 Harvill his opinion as to the extent and amount of the  
17 lien that is of record based upon his examination.

18 He is permitted as an expert, as he testifies  
19 about the effect of record documents upon the title of  
20 the property, to rely upon hearsay and to base his  
21 opinion that he is enunciating to the Court upon those  
22 hearsay statements.

23 And so, although I would acknowledge that from  
24 a factual standpoint the letter at Exhibit number five  
25 constitutes hearsay. To the extent that Mr. Harvill

1 has relied upon it in determining an opinion as to the  
2 extent of liens that would be required to be paid from  
3 Exhibit number four, I believe it's admissible before  
4 the Court.

5 THE COURT: I'm going to sustain the  
6 objection. It is hearsay. It is not technical or  
7 require any expertise. What it requires is a  
8 foundation of the payoff and the knowledge of that  
9 deriving from the books and records of the one to whom  
10 is owed the money or from other sources as may be  
11 appropriate.

12 What you're doing is trying to get in hearsay  
13 in the guise of expert testimony but this testimony is  
14 not expert testimony so I am going to sustain the  
15 objection.

16 MR. O'DONNELL: I understand, Your Honor.  
17 Thank you.

18 BY MR. O'DONNELL:

19 **Q Mr. Harvill, let me ask you to turn to Exhibit**  
20 **number six for a moment. Would you describe that**  
21 **document to the Court briefly?**

22 A The first six pages which have been at issue,  
23 that's the title abstract that I receive routinely when  
24 I do a first search on a property when I receive a  
25 foreclosure inquiry from Access.

1 I always order a title search and the  
2 remaining documents in this exhibit are copies of liens  
3 that appeared on title as of February of this year

4 **Q Have you reviewed all of those documents?**

5 A I have.

6 **Q Do you have an opinion as to the impact or**  
7 **import as to title with respect to each of these**  
8 **documents?**

9 A My opinion is that most of them except for  
10 perhaps the mechanic's liens do attach. There are some  
11 issues with the mechanic's liens in this particular  
12 case relating to whether they were ever enforced or  
13 not.

14 There are several judgment liens on the  
15 property. There's, just going through there's a  
16 memorandum --

17 **Q Take a moment to look at them one at a time.**

18 A Sure.

19 **Q Let me ask you first, in the context of your**  
20 **examination of title did you undertake to examine**  
21 **whether or not real estate taxes were current on this**  
22 **property?**

23 A I did.

24 **Q Could you tell the Court, please, what you**  
25 **determined?**

1           A     I determined as of June of this year --

2                   MR. FOREST: Your Honor, it's not a matter of  
3     opinion whether an obligation is owed.

4                   THE COURT: Sustained.

5                   MR. O'DONNELL: Your Honor, he's conducted the  
6     examination.

7                   THE COURT: I know there are real estate  
8     taxes. I don't know the amount and that's what you're  
9     getting at and I'm not going to allow his opinion on a  
10    matter of fact of that nature.

11                  MR. O'DONNELL: All right.

12                  THE COURT: Real estate taxes or the first  
13    lien to the extent that they are unpaid. That's by  
14    statute.

15                  BY MR. O'DONNELL:

16           **Q     Mr. Harvill, let me have you turn past the**  
17   **first six pages of Exhibit number six and begin with**  
18   **the memorandum of lien for association assessment?**

19           A     Correct.

20           **Q     Are you familiar with that document?**

21           A     I am.

22           **Q     Could you tell the Court what your opinion is**  
23   **with respect to the impact of that document on title to**  
24   **the property?**

25           A     I believe that's a valid lien on the property.

1 From the land records it appears that it's a valid lien  
2 on the property and they have been on my notice list  
3 for this particular property.

4 As required by Virginia law the homeowners'  
5 associations have to be informed of foreclosure sales.

6 **Q Would you look at the next page which is a**  
7 **memorandum of mechanic's lien claimed by Walls by**  
8 **McKinley, Incorporated and answer the same question,**  
9 **that is, the effect of that document in your opinion on**  
10 **title to the property?**

11 A Walls by McKinley, this was, I believe a valid  
12 mechanic's lien at the time it was filed. It may or  
13 may not still be a valid lien. What we did in this  
14 particular foreclosure sale is we made the sale subject  
15 to mechanic's liens because of issues with pulling,  
16 with the repeated bankruptcies.

17 We did not want to -- I did not want to have  
18 to render any kind of guarantee or warranty of title  
19 and the deed to a subsequent purchaser over these  
20 mechanic's liens.

21 So we did the sale subject to the mechanic's  
22 liens because they appear to me valid on title for when  
23 they were filed. The issue was which ones had been  
24 enforced in a timely fashion.

25 **Q Would that be true for all of the mechanic's**

1    **liens or do you have particular knowledge as to any of**  
2    **the others?**

3           A     I do have particular knowledge to the  
4    mechanic's liens that were signed off by Robert  
5    Richardson. That would be the mechanic's lien.

6           **Q     The next one, the claimant Fence Solutions?**

7           A     Fence Solutions, LLC. My understanding, and I  
8    have received notice of a filing of a petition to  
9    enforce that lien.

10          **Q     All right.**

11          A     And then going to the next one which is Lewis  
12    Aquatech Pool Supply, Inc. is the claimant. That one  
13    also was done by Robert Richardson. As I understand it  
14    that has -- I have also received notice of a filing of  
15    a petition to enforce that lien which I believe is  
16    pending currently.

17                There's another mechanic's lien with a  
18    different instrument number, though. It seems to cover  
19    the same debt filed by Robert Richardson. I believe  
20    that is also a valid mechanic's lien although it may be  
21    duplicative and as I understand it that has been filed  
22    to -- a petition to enforce that has been filed.

23          **Q     Okay.**

24          A     The next one is Perfect Landscapes, LLC. As  
25    far as I know I have never received notice that a

1 petition to enforce this has been filed but it  
2 certainly was a valid lien at the time it was filed.

3 Whether the timing of it for filing a petition  
4 has expired, we basically decided to, in order making  
5 warranty in the deed related to that we did the sale  
6 subject to the mechanic's lien.

7 **Q All right.**

8 A The next one is Perfect Landscapes, LLC. Same  
9 opinion. The next one is the memorandum of lien for  
10 association assessments for Lansdowne on the Potomac.  
11 Once again, that's the homeowners' association.

12 We've certainly made sure they've received  
13 their notices as required by Virginia Code 55-59.1 and  
14 that appeared to be a valid lien as of the time it was  
15 filed, and I have further information on that which we  
16 can talk about, I guess in a moment.

17 I'll go through each one of these. There's a  
18 memorandum of lis pendens from Michael Burgess, Diane  
19 Burgess of Burgess Custom builders against Brett  
20 Amendola.

21 There was a lawsuit pending against Mr.  
22 Amendola by the Burgesses. This one as I understand it  
23 was against Brett Amendola and Janet Amendola I  
24 believe, this particular one.

25 Strike that. This one is dated 12/11/2009. I

1 believe this is a newer lawsuit. There was a lawsuit  
2 pending in Fairfax that was filed against the Amendolas  
3 by the Burgesses.

4 That one was reduced to judgment against Brett  
5 Amendola for I believe \$700,000. This is a memorandum  
6 of a lis pendens of a new action that's been filed by  
7 the Burgesses against the Amendolas.

8 **Q To which the claim of the subject property is**  
9 **in dispute?**

10 A Yeah, they claim the subject property is in  
11 dispute and I have discussed that with the attorney for  
12 the Burgesses and essentially this appears to be a  
13 valid lis pendens to me since the case, as I understand  
14 it the last time I checked was still pending.

15 **Q You then have a judgment order?**

16 A We do have a judgment. This judgment appears  
17 to be attached to the property. It's in favor of Eagle  
18 Bank for \$124,599.17 plus interest and attorney's fees.

19 It is against Brett and Janet Amendola. It  
20 appears to attach against their interest in the  
21 property, that is, their 50 percent share.

22 The next is an abstract of judgment from the  
23 Fairfax County Circuit Court from the Burgesses versus  
24 Brett Amendola. The Burgesses obtained, as I  
25 understand a \$700,000 judgment against Brett Amendola



1 with interest and fees.

2 I actually watched part of that proceeding  
3 when it was going on and the judgment was only rendered  
4 against Brett Amendola because Janet Amendola had  
5 declared bankruptcy a day or two before this trial.

6 The same bankruptcy that stopped our May 2009  
7 foreclosure sale also stopped them from getting a  
8 judgment against Janet Amendola.

9 As I understand it because Brett and Janet  
10 are, as far as I know are still married. This judgment  
11 may not attach to the property because of the fact that  
12 Brett and Janet own their share of the properties  
13 tenants by the entirety.

14 **Q Very well.**

15 A So but I don't have current knowledge as to  
16 whether they have or have not gotten divorced or  
17 anything of that nature which would change that  
18 opinion.

19 The next one, the next page looks like it's  
20 simply a reflection of that same judgment.

21 **Q And then the last is just a homestead deed,**  
22 **correct?**

23 A Order of non-suit against the Defendant  
24 Wachovia; these were things that popped up on title  
25 that didn't really give me too much concern. There's a

1 homestead deed from Janet Amendola which indicates that  
2 she filed bankruptcy previously.

3 Q Very good. Let me ask you finally just to  
4 look at Exhibit number 19 and identify that document,  
5 please?

6 A This document is a deed between Roger and  
7 Maureen, Brett and Janet to RMAA Real Estate Holdings,  
8 LLC which was the single purpose entity that was formed  
9 for purposes of holding title to this property to  
10 prevent future sequential bankruptcy filings by the  
11 Amendola family.

12 MR. O'DONNELL: Very good. Move Exhibit 19,  
13 Your Honor.

14 THE COURT: Nineteen is received.

15 (The item referenced above,  
16 previously marked as  
17 Movant's Exhibit No. 19, was  
18 received into evidence.)

19 MR. O'DONNELL: That's all I have for Mr.  
20 Harvill, Your Honor.

21 THE COURT: Thank you.

22 CROSS EXAMINATION

23 BY MR. FOREST:

24 Q Mr. Harvill, there was also one more attempt  
25 to foreclose that you didn't discuss, wasn't there?

1 A If you have a date it may ring a bell.

2 Q March of 2010?

3 A Yes, there was a foreclosure date scheduled  
4 for the end of March 2010.

5 Q Why did that not go forward?

6 A As I understand it there was a work-out  
7 arranged between the bank and the borrowers.

8 Q Did you have the opportunity to -- do you know  
9 now who Tom Wiltshire is?

10 A I do.

11 Q Did you have the opportunity at the time he  
12 was bidding to ask him if the Amendolas had any  
13 interest in the company that was bidding?

14 A At the time he was bidding he approached  
15 the -- I did not have an opportunity during the  
16 bidding. It was actually a pretty good bidding  
17 session. It was hot and heavy.

18 There were several interested parties there.  
19 I learned of the -- he said that a person named  
20 Amendola might be involved right as we were signing the  
21 memorandum, that is, right when he signed the  
22 memorandum.

23 I said, "this is an LLC in formation?" He  
24 said yes. I said, "are any of the principals named  
25 Amendola?" and he said, "one of them might be."

1 Q But you had an opportunity to ask that  
2 question before the bidding began?

3           A       I did not.  He approached the bidding after,  
4   just as I was beginning to start the bidding.  He  
5   approached the bid.

6                   He had called me earlier the day before and I  
7   believe I had spoken to him that morning and he said he  
8   was Tom Wiltshire and he was coming to bid and he  
9   wanted to know the deposit amount.

10           The check he presented only had his name on it

11   and it said Tom Wiltshire on it and so --

12 Q Did he prevent you from inquiring of Mr.  
13 Wiltshire as to whether any of the Amendolas had any  
14 interest in this company?

15           A       It's not really -- see, here's the thing.  
16       It's not really important whether or not the Amendolas  
17       did.  If someone shows up with a check and can bid at a  
18       sale there's not much I can do.

19 I have to let them bid. If Brett Amendola  
20 showed up with a check I would have to let him bid if  
21 he had the required deposit amount.

22           They have a right to buy the sale even at  
23   their own foreclosure so there wasn't really any point  
24   necessarily in making an inquiry.

25           The way you stop people from doing that,

1 facetiously, is have larger deposits.

2 THE COURT: What was the deposit?

3 THE WITNESS: It was \$25,000 on the first  
4 sale. We were trying to encourage action on the  
5 property.

6 BY MR. FOREST:

7 **Q Do you know whether there was a mechanic's**  
8 **lien agent nominated for this property?**

9 A I believe when we first discovered the  
10 mechanic's liens we had some discussions on that. I do  
11 recall seeing some documents relating to mechanic's  
12 liens agents but what -- we made the decision fairly  
13 early on to pursue the sale subject to mechanic's liens  
14 and leave it up to the buyer to sort through that.

15 Because of the issues with the bankruptcies,  
16 the delays caused by the bankruptcies and things of  
17 that nature we just decided that it was best to allow  
18 the buyer to sort through the mechanic's liens since  
19 the sale it subject to.

20 **Q So if a mechanic's lien agent was appointed**  
21 **that would have an impact upon whether or not these**  
22 **liens could possibly attach?**

23 A It could.

24 MR. FOREST: No further questions, Your Honor.

25 //

1 REDIRECT EXAMINATION

2 BY MR. O'DONNELL:

3 Q In the March 2010 foreclosure that was  
4 stopped, are you aware that was the result of an  
5 alleged contract that was produced by the Amendolas?

6 A My understanding is that there was a buyer  
7 interested in the property, there was a contract, and  
8 there was some money that changed hands so there was a  
9 payment to the bank as far as, and that they were going  
10 to give -- the bank was going to give the Amendolas the  
11 opportunity to have the property sold.

12 Q And you're aware that the contract never  
13 closed?

14 A I am.

15 MR. O'DONNELL: Thank you. That's all I have,  
16 Your Honor.

17 THE COURT: All right, thank you. Can the  
18 witness be excused?

19 MR. O'DONNELL: Yes, Your Honor.

20 MR. FOREST: Yes, Your Honor.

21 THE COURT: Thank you for coming. You're free  
22 to leave.

23 THE WITNESS: Thank you, Your Honor.

24 MR. O'DONNELL: Thank you for accommodating  
25 us, Your Honor.

1 THE COURT: So what do you have left?

2 MR. O'DONNELL: I have Mr. Shoemaker, Your  
3 Honor, and I would expect him to be 20 to 30 minutes.  
4 I have an estate residential appraisal report of the  
5 property and the Appraiser is also present.

6 THE COURT: And what do you have?

7 MR. FOREST: I have Mr. Amendola and not to be  
8 lighthearted about it, Your Honor, but a bunch of  
9 hearsay documents. I say that because I have no  
10 witnesses. We weren't able to get witnesses here to  
11 authenticate them.

12 Since you're asking about my time estimate,  
13 maybe 20, 30 minutes for Mr. Amendola.

14 THE COURT: We'll have to adjourn -- cross  
15 that bridge when we come to it. All right, we'll go  
16 ahead and recess for lunch. You can contact your other  
17 clients, can't you, as far as the time to return?

18 MR. MARTIN: I will. My client won't be  
19 present at the hearing but I'll contact opposing  
20 Counsel and inform them of the delay so that their  
21 clients don't. My main witness will be his client.  
22 I'll inform them of the delay.

23 THE COURT: All right, well, let's see what  
24 we're going to do.

25 MR. MARTIN: Can I tell them around 3:00?

1 THE COURT: I think 3:00. Why don't we  
2 reconvene at 3:00? Now the question is which case. We  
3 either finish this or interrupt it. I'm inclined to go  
4 ahead and finish this case.

5 MR. MARTIN: As Mr. O'Donnell said he has  
6 seniority over me. I have no problem continuing or  
7 extending mine, subordinating my hearing to his.

8 THE COURT: Subordination, all right. Why  
9 don't you tell them -- do you think your case will take  
10 an hour or less?

11 MR. MARTIN: I think it will take an hour to  
12 an hour and a half. I'll have two witnesses. They'll  
13 have one or two witnesses. The argument is relatively  
14 short. I'm hoping that we can do it within an hour.

15 THE COURT: Why don't you tell them 4:00 and  
16 we'll return here at 3:00? That will give you all an  
17 hour to put your evidence in and make your arguments  
18 that you need to make.

19 All right, thank you.

20 MR. FOREST: Thank you, Your Honor.

21 (Off the record at 1:23 p.m.)

22 (On the record at 3:02 p.m.)

23 THE COURT: Go ahead, Mr. O'Donnell.

24 MR. O'DONNELL: Thank you, Your Honor. I call  
25 Robert Shoemaker to the stand.



1 THE COURT: Mr. Shoemaker, would you come up  
2 to the Clerk's desk to be sworn, please?

3 MR. FOREST: Your Honor, I realize I didn't  
4 ask for this before when Mr. Harvill was testifying but  
5 can I now have a rule on witnesses?

6 THE COURT: Who are they?

7 MR. O'DONNELL: The only other witness I have  
8 now, Your Honor, would be the expert. He's permitted  
9 to sit in.

10 THE COURT: Only if the testimony is necessary  
11 for formulating his opinion.

12 MR. O'DONNELL: He's not a fact witness, Your  
13 Honor. He's going to introduce the appraisal.

14 THE COURT: What's his name?

15 MR. O'DONNELL: Gilbert Rogers, Your Honor.

16 THE COURT: There's been a request for a rule  
17 on witnesses. I'm going to ask if you would sit in the  
18 witness room. We'll come get you at the appropriate  
19 time.

20 All right, come on up and be sworn, please.

21 MR. O'DONNELL: Your Honor, before I start, in  
22 an abundance of caution I just don't recall. Exhibit  
23 number 13 was identified by Mr. Harvill. It was the  
24 fax by attorney Azarcon on the Brevon Developers case.

25 I thought I moved it in. I'm not sure that I

1 did.

2 THE COURT: That was admitted. Thirteen was  
3 admitted. Did you have objection to it?

4 MR. FOREST: No objection.

5 THE COURT: If you do I'll reopen it and let  
6 you state it.

7 MR. FOREST: No, no objection, Your Honor.

8 THE COURT: All right, 13 is in.

9 MR. O'DONNELL: Thank you, Your Honor.

10 Whereupon,

11 ROBERT SHOEMAKER

12 was called as a witness on behalf of the  
13 Creditor and, having been first duly sworn, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. O'DONNELL:

17 **Q Would you state your name and business address**  
18 **please?**

19 A It's Robert Shoemaker. My business address is  
20 1800 Robert Fulton Drive in Reston, Virginia 20191.

21 **Q Mr. Shoemaker, would you describe to the Court**  
22 **your occupation and employment?**

23 A I am the Chief Credit Officer at Access  
24 National Bank.

25 **Q With respect to the transaction that we have**

1    **been talking about here in connection with this**  
2    **proceeding, can you tell me, please, what**  
3    **responsibility or involvement you have had with respect**  
4    **to the loan involving 18688 Overlook Court, Leesburg,**  
5    **Virginia?**

6           A     I was originally responsible for taking the  
7    application, getting it approved. Managed the credit  
8    on and off in the beginning but since it became kind of  
9    a workout I took it back over and I've been primarily  
10   responsible for all aspects of it.

11           Q     **When did it become, in the bank's estimation a**  
12   **workout, if you will?**

13           A     Really just about the time of the first  
14   maturity. I believe that was probably in '07. It was  
15   a 12 month construction loan and we were supposed to be  
16   in and out in 12 months and we're still not out. The  
17   house isn't completed.

18           Q     **I'm going to walk you through some documents**  
19   **and I want you to take a look at them, identify them**  
20   **for me and then I'll have a few questions. If I could**  
21   **begin first with the exhibit book that's in front of**  
22   **you, if you would turn to Exhibit number one?**

23           A     Okay.

24           Q     **Would you describe that document to the Court,**  
25   **please?**

1           A       That's the promissory note that the borrowers  
2       executed in connection with the loan.

3                   MR. O'DONNELL: Move Exhibit number one, Your  
4       Honor.

5                   THE COURT: Any objection?

6                   MR. FOREST: None, Your Honor.

7                   THE COURT: Exhibit number one is admitted.

8                                       (The item referenced above,  
9                                       previously marked as  
10                                      Movant's Exhibit No. 1, was  
11                                      received into evidence.)

12                   MR. O'DONNELL: Thank you, sir.

13                   BY MR. O'DONNELL:

14           **Q       Number two is the deed of trust, correct?**

15           A       Yes, it is.

16                   MR. O'DONNELL: That document has already been  
17       admitted, Your Honor.

18                   BY MR. O'DONNELL:

19           **Q       Look at Exhibit number three for a moment and**  
20       **tell me what that is?**

21           A       It's our payoff letter.

22           **Q       Can you tell the Court, please, does that**  
23       **payoff represent the full amount owed to Access**  
24       **National Bank as of today's date with respect to the**  
25       **property?**

1           A       With respect to the additional interest from  
2   August 3rd through today.

3           Q       Are there any other costs that would be  
4   incremental from August 3rd to today?

5           A       Additional legal fees and an appraisal fee.

6           Q       Guys like me?

7           A       Yes, sir.

8           Q       Do you have any idea what the total of those  
9   additional costs would be?

10          A       Probably talking at least another \$15,000.

11          Q       Did you listen to Mr. Harvill's testimony here  
12   this morning or early this afternoon?

13          A       Yes.

14          Q       And did you agree with his testimony or  
15   description of events respecting the prior foreclosure  
16   attempts with respect to this property?

17          A       Yes.

18          Q       Is there anything in his testimony that you  
19   feel is important to correct or draw to the Court's  
20   attention?

21          A       No.

22          Q       Mr. Shoemaker, through all of the prior  
23   bankruptcies that have affected this particular  
24   property has there been any proposed or attempted  
25   reorganization by any of the putative debtors?

1 MR. FOREST: Your Honor, I'm going to object  
2 to that question because the bankruptcies on their face  
3 state that they're Chapter 7s.

4 MR. O'DONNELL: It's a question, Your Honor.

5 THE COURT: I'll allow the answer to it.

6 THE WITNESS: No.

7 BY MR. O'DONNELL:

8 Q Has there been any attempt during any of those  
9 to effect any payment or treatment of the claim of  
10 Access National Bank?

11 A No.

12 Q Are you receiving -- and when I say "you," is  
13 Access National Bank receiving current payments under  
14 the loan?

15 A No, no we're not. I believe the last payment  
16 we received was in March of this year.

17 Q I want to take a few minutes and discuss the  
18 decision to forbear from the October 2009 foreclosure.  
19 Are you familiar with that notice of foreclosure?

20 A Yes.

21 Q And Mr. Harvill testified earlier today that  
22 that foreclosure was ultimately stayed because the bank  
23 entered into an agreement of forbearance with the  
24 borrowers at that time; is that correct?

25 A Yes.

1           **Q     Can you tell me, please, how you were involved**  
2           **in the negotiation and ultimate decision?**

3           A     I negotiated the forbearance with the  
4           borrowers, primarily with Brett Amendola and Roger  
5           Amendola. There was some reluctance among some of the  
6           other people at the bank to enter into a forbearance  
7           just because of what we'd already been through with the  
8           thwarted foreclosure attempts.

9           **Q     So what lead the bank then to decide to**  
10          **foreclose? What motivated you to decide to effect that**  
11          **forbearance?**

12          A     The borrowers indicated that they had a cash  
13          flow stream that would be sufficient to make payments  
14          of \$50,000 per month plus inject \$50,000 per month into  
15          completing the construction which was of primary  
16          importance to us.

17                 Getting the house built made it significantly  
18          more marketable. One of the things that we were not  
19          going to do was continue to let the property stay  
20          titled as it was.

21                 We felt it significantly important to transfer  
22          title into RMAA, the new LLC that was formed and in  
23          that negotiation the bank was going to be a managing  
24          member along with Roger Amendola.

25                 Because we've been through these serial

1 bankruptcies and nothing was getting accomplished it  
2 was really no other way to proceed, was to have that  
3 done and have the terms in there that we negotiated.

4 **Q With respect to those terms let me draw your**  
5 **attention in the book in front of me to Exhibit number**  
6 **17, if you could turn to that for a moment, please?**

7 A Okay.

8 **Q Can you tell the Court what Exhibit 17 is?**

9 A This is the forbearance agreement that we  
10 negotiated.

11 MR. O'DONNELL: Your Honor, move Exhibit  
12 number 17.

13 MR. FOREST: No objection, Your Honor.

14 THE COURT: Seventeen is admitted.

15 (The item referenced above,  
16 previously marked as  
17 Movant's Exhibit No. 17, was  
18 received into evidence.)

19 MR. O'DONNELL: Thank you.

20 BY MR. O'DONNELL:

21 **Q And this was signed by you on page nine of the**  
22 **agreement; is that correct?**

23 A Yes, it was.

24 **Q And it was also signed on pages 10 and 11 by**  
25 **each and all of the Amendolas, that is, Brett, Janet,**



1 Roger, and Maureen, correct?

2 A Yes, it was.

3 Q And it was also signed on behalf of Brevon  
4 Developers by Maureen Amendola, correct?

5 A Correct.

6 Q Now I want to turn your attention first, if  
7 you would, to page three of Exhibit 17 in paragraph 4.3  
8 if you can take a look at that for a moment.

9 A Okay.

10 Q This says, Mr. Shoemaker, that "within seven  
11 days of the execution of this agreement the property  
12 will be conveyed to a limited liability company to be  
13 formed, Newco. Newco shall be managed company and  
14 shall have multiple managers."

15 It says that "Acme Real Estate, LLC, a wholly  
16 owned subsidiary of the bank shall be a manager of  
17 Newco and that the operating agreement of Newco shall  
18 be subject to the bank's approval and it's sole  
19 discretion and shall contain provisions which, among  
20 others require unanimous approval of the managers in  
21 order to place Newco into bankruptcy proceedings."

22 Do you see those terms?

23 A Yes.

24 Q Were you familiar with those and had you  
25 negotiated those during the context of negotiation and

1     **execution of this forbearance agreement?**

2           A     Yes, specifically these terms.

3           Q     Can you tell me, please, how these terms arose  
4     **and were developed in connection with the bank's**  
5     **agreement to undertake and execute the forbearance**  
6     **agreement?**

7           A     At this time I think we'd already seen three  
8     serial bankruptcies and very little progress being made  
9     on the house. We felt it critical to stop that process  
10    of serial bankruptcies and try to get some control of  
11    the situation.

12                   And this was the only way we were going to  
13    proceed.

14           Q     And in fairness to everybody involved the  
15    **forbearance agreement also provided for payments to the**  
16    **bank. There was an attempt during this stage to work**  
17    **this out, wasn't there?**

18           A     We were always available and we tried  
19    everything we could and we worked with them as well as  
20    we professionally could.

21           Q     How important to the bank was this particular  
22    **provision in section 4.3 of the forbearance agreement**  
23    **providing for the effective approval or consent of the**  
24    **bank with respect to any filing of bankruptcy for**  
25    **Newco?**

1           A     Without it we would not have entered into a  
2     forbearance with the borrowers.

3           Q     Now I just want to make sure that we're clear  
4     and we have the record straight. The agreement says  
5     that Acme Real Estate, LLC, a wholly owned subsidiary  
6     of the bank shall be a manager of Newco.

7                     Isn't in fact Acme Real Estate, LLC a wholly  
8     owned subsidiary of the bank?

9           A     Yes, it's a single member LLC.

10          Q     Can you describe to the Court the purpose of  
11     that entity?

12          A     It is married to hold real estate outside of  
13     the bank. It could be REO or other assets of the bank.

14          Q     Asset real estate either reacquired by REO or  
15     otherwise through the bank's lending practices?

16          A     Right.

17          Q     Did the parties actually follow through and  
18     create this new company?

19          A     No, our attorney actually ended up having to  
20     draft this document and draft the operating agreement  
21     for the new company.

22          Q     How were you involved in that?

23          A     Merely pushing and trying to get that done,  
24     and again, trying to meet the terms of the forbearance  
25     agreement.

1           **Q     This forbearance agreement was signed when, to**  
2     **the best of your recollection?**

3           A     In October of --

4           **Q     Of '09, correct?**

5           A     Right.

6           **Q     Would you look at Exhibit 18 for a moment?**  
7     **Can you identify that document to the Court briefly?**

8           A     This is the operating agreement for the real  
9     estate holding company that was mentioned in the  
10    forbearance agreement.

11          **Q     And that's RMAA Real Estate Holdings, LLC,**  
12     **correct?**

13          A     Correct.

14          **Q     That's the debtor before the Court today; is**  
15     **that correct?**

16          A     Yes.

17               MR. O'DONNELL: Your Honor, move Exhibit 18.

18               MR. FOREST: No objection, Your Honor.

19                               (The item referenced above,  
20                               previously marked as  
21                               Movant's Exhibit No. 18, was  
22                               received into evidence.)

23               THE COURT: Eighteen is admitted.

24               MR. O'DONNELL: Thank you.

25               BY MR. O'DONNELL:

1 Q And Mr. Shoemaker, if you know who prepared  
2 Exhibit 18?

3 A Our attorney did.

4 Q And at whose direction and under whose  
5 supervision?

6 A Under mine.

7 Q Did you approve the final form of this  
8 document before it was presented to the parties for  
9 execution?

10 A Yes, I did.

11 Q And in fact, at pages 19 and 20 did not each  
12 and all of the Amendolas sign and acknowledge this  
13 particular document?

14 A Yes, they did.

15 Q And I would point out, if we could flip  
16 through here real quick, at the bottom of page three at  
17 article 2.01 it says "the purpose of the company shall  
18 be to own, buy, sell, invest in, in other words deal  
19 with the property at 18688 Overlook Court, Leesburg,  
20 Virginia." Do you agree with that statement?

21 A Yes.

22 Q And if we turn to page seven of the operating  
23 agreement down at the bottom, "the provision deals with  
24 the election of managers and identifies that the  
25 members hereby unanimously elect Acme Real Estate, LLC

1 and Roger Amendola as the initial managers of the  
2 company." Do you agree with that?

3 A Yes.

4 Q And that was consistent with the provisions of  
5 the forbearance agreement, was it not?

6 A Yes, it was.

7 Q In fact, required in order to comply with the  
8 terms of that agreement; is that correct?

9 A Yes.

10 Q And if you would look at page eight I want to  
11 direct your attention to paragraphs 5.03 and 5.04, 5.03  
12 indicates that "for so long as Access National Bank is  
13 a creditor of the company and has not consented  
14 otherwise in writing, Acme Real Estate, LLC shall be a  
15 manager of the company." Do you see that?

16 A Yes.

17 Q Why was that important?

18 A We needed to remain in the transaction.

19 Again, going down to the next paragraph it says, "in  
20 order for the entity to be put into bankruptcy requires  
21 unanimous consent from the managers, one of which needs  
22 to be the bank."

23 Our thought was, as long as we're a manager  
24 this thing won't end up back in bankruptcy.

25 Q And you would be manager as long as Access was

1     **extended with respect to the loan secured by the**  
2     **property?**

3           A     Yes.

4           Q     **Did the Amendolas comply thereafter with the**  
5     **terms of the forbearance agreement?**

6           A     No.

7           Q     **What happened after that?**

8           A     The payments did not come in on time. The  
9     injection of capital into the construction of the home  
10    stopped. It seemed like we were right back where we  
11    were six months before, before we negotiated the  
12    forbearance agreement.

13          Q     **Did the bank decide at that point to commence**  
14    **foreclosure processes again?**

15          A     Yes.

16          Q     **Did ultimately it notice a foreclosure in**  
17    **March of 2008?**

18          A     Yes, we did.

19          Q     **Do you know what happened in March of 2010 to**  
20    **cause the bank to withdraw that initial foreclosure**  
21    **attempt?**

22          A     The borrowers provided a contract on the house  
23    to sell it.

24          Q     **Okay, and did you review and approve that**  
25    **contract?**

1           A     I reviewed it and I had verbal discussions  
2     with the borrowers that it would be acceptable as long  
3     as the initial down payment of \$400,000 was received as  
4     called for in the contract.

5           Q     Did you ever have any discussions with the  
6     Amendolas, any one of them about whether or not the  
7     proposed purchaser actually performed under the  
8     contract by posting the required deposit money?

9           A     Yes.

10          Q     What did they tell you?

11          A     They told me the deposit had not been made.  
12     They were trying to work out other things and it became  
13     clear to me that the buyer was not willing to settle on  
14     the purchase contract.

15          Q     What did you decide to do after that, Mr.  
16     Shoemaker?

17          A     We had no choice but to foreclose.

18          Q     And I would ask you, if you would please, to  
19     look at Exhibit number 20. Did you authorize the  
20     foreclosure sale that was noticed by Mr. Harvill for  
21     May 24th, 2010?

22          A     Yes.

23          Q     And you heard Mr. Harvill's testimony earlier  
24     about the fact that that sale was knocked down to a to  
25     be formed LLC?



1 A Yes.

2 Q Did you agree with his testimony earlier about  
3 the conduct of that transaction?

4 A Yes.

5 Q And after that sale failed what did you do?

6 A I told them, let's foreclose again.

7 Q Would you look at Exhibit 21? That's Mr.  
8 Harvill's notice of a June 23rd foreclosure. Did you  
9 authorize Mr. Harvill to commence and effect a  
10 foreclosure sale at the property on that date?

11 A Yes, I did.

12 Q What happened at that time?

13 A The property was put into -- RMAA was put into  
14 bankruptcy.

15 Q RMAA, and if you look at Exhibit number 22 do  
16 you recall ever seeing that petition?

17 A Yes.

18 Q That's the involuntary in the first case, is  
19 it not?

20 A Yes.

21 Q And if you look at it, that's signed by the  
22 Amendolas, Roger Amendola, Brett Amendola, and Janet  
23 Amendola as members of the LLC, right?

24 A Right.

25 Q Each and every one of them also signed the

1       **forbearance agreement, correct?**

2           A       Yes.

3           **Q       And also signed the operating agreement?**

4           A       Yes.

5           **Q       Were you surprised to see this document, this**  
6       **filing?**

7                   MR. FOREST:  Objection, Your Honor.  Whether  
8       the witness is surprised is immaterial.

9                   MR. O'DONNELL:  I'll rephrase, Your Honor.

10                  BY MR. O'DONNELL:

11           **Q       What was your reaction to the filing of RMAA**  
12       **into an involuntary by the Amendolas?**

13           A       Shocked and a little bit disgusted.

14           **Q       Why?**

15           A       And again, we're a community bank where we try  
16       to make sure that we're doing good business.  This is a  
17       loan that we had on the books for three years.  We did  
18       everything we could to give them an opportunity to  
19       perform.

20                   We had agreements that this wouldn't happen  
21       and it happened.

22           **Q       Was Acme or Access or any of its officers to**  
23       **the best of your knowledge ever consulted or was there**  
24       **permission requested by any of the Amendolas to effect**  
25       **this filing evidenced at Exhibit number 22?**

1 A No.

2 Q Had Acme been requested would you have been  
3 authorized to provide consent?

4 A I would have been authorized but I would not  
5 have given consent.

6 Q And that was the purpose of the forbearance  
7 agreement in the first place, wasn't it?

8 A Yes.

9 Q What happened after that, after the  
10 involuntary, the first involuntary was filed?

11 A We foreclosed again.

12 Q You secured a dismissal of the case first; is  
13 that correct?

14 A Yes, we did. We got the dismissal. Then we  
15 told Mr. Harvill to foreclose one more time.

16 Q And that at Exhibit number 23, is  
17 Mr. Harvill's notice for August 3rd of 2010 and you  
18 authorized him to commence and effect that foreclosure?

19 A Yes.

20 Q And what happened at that stage?

21 A It was put into involuntary again.

22 Q And that again is the petition at Exhibit  
23 number 24, if you look for that for a moment. That's  
24 signed by Brevon Developers by Roger Amendola, and by  
25 Brett Amendola; do you see that?

1 A Yes.

2 Q And each and every one of those individuals  
3 and entities signed off on the forbearance agreement,  
4 correct?

5 A Yes.

6 Q What was your reaction to this filing?

7 A I guess it was more of the same. I mean, I  
8 was disappointed in the fact that last October we  
9 didn't go ahead and try to pursue the foreclosure then.  
10 Maybe we would have even been further along today than  
11 where we are.

12 Q Was the consent of Acme requested in any way,  
13 shape, or form by any of the Amendolas with respect to  
14 this most recent filing of the involuntary petition?

15 A No.

16 MR. O'DONNELL: That's all I have right now,  
17 Your Honor.

18 THE COURT: Thank you.

19 CROSS EXAMINATION

20 BY MR. FOREST:

21 Q Mr. Shoemaker, is the consent of any of the  
22 Amendolas required to file an involuntary petition  
23 against RMAA?

24 A Is the consent required? I'd need to go back  
25 and review the operating statement, operating

1 agreement. Would you like me to do that?

2 Q I'd like you to answer the question. If you  
3 would please review whatever you need to do that. Not  
4 to distract your attention but I think you'd want to  
5 review paragraph 5.04.

6 A It was number 18, right?

7 Q Yes.

8 A And you were pointing me to what page?

9 Q I was asking you the question generally  
10 suggesting that you might want to review paragraph  
11 5.04.

12 A 5.04.

13 MR. O'DONNELL: And Your Honor, I just want to  
14 be clear. The question is, is the Amendolas consent  
15 necessary to file a bankruptcy?

16 MR. FOREST: You know, I realize that I may  
17 have asked that the wrong way but I'll rephrase the  
18 question.

19 BY MR. FOREST:

20 Q Was Access' consent or Acme's consent?

21 THE COURT: To an involuntary?

22 MR. FOREST: I'm sorry?

23 THE COURT: To an involuntary.

24 MR. FOREST: Yes.

25 THE WITNESS: To an involuntary. It says,

1 "the unanimous consent of all managers shall be  
2 required to either file bankruptcy petition or sell,  
3 transfer, or encumber the real property."

4 So all managers must consent, "shall be  
5 required," the unanimous consent and Acme Real Estate  
6 was one of the managers.

7 BY MR. FOREST:

8 Q So that language you just read is the basis  
9 for your answer that consent was required?

10 A Consent is required, right.

11 Q Are you familiar with the price which the sale  
12 was knocked down on the May 24th sale?

13 A I believe it was \$3,350,000.

14 Q Did you attend that sale?

15 A Yes, I did.

16 Q Approximately how many bidders participated in  
17 the sale? How many people made bids?

18 A Active, three, I believe.

19 Q And who were those three?

20 A Actually, including the bank it was four.  
21 There was myself, the gentleman who actually won the  
22 bid, there was one third party buyer, and the  
23 subordinate lien holder.

24 Q What did the bank -- what was the bank's best  
25 and final bid at that sale?

1 A It was our debt. It was our payoff.

2 Q Which was approximately?

3 A Two point two at that time, \$2.2 million.

4 Q And of the four people you identified was the  
5 bank the first person to drop out?

6 A Yes.

7 Q Who was the third party purchaser; where did  
8 he or she drop out?

9 A Around \$2.6 million.

10 Q And the next person who dropped out was, if  
11 you could identify that person?

12 A The subordinate lien holder.

13 Q And where did he or she drop out?

14 A Probably \$3,325,000.

15 MR. FOREST: Your Honor, I have a document I'd  
16 like.

17 THE COURT: All right, hand that up, please.

18 MR. FOREST: I have a copy.

19 THE COURT: For the witness?

20 MR. FOREST: For the witness and if we could  
21 just, I don't know whether the Court prefers to  
22 identify those by letters. If so I would propose  
23 Defendant's A.

24 THE COURT: It will be A.

25 //

1 (The item referenced above  
2 was marked for  
3 identification as  
4 Defendant's Exhibit A.)

5 BY MR. FOREST:

6 Q Sir, could you take a look at that document  
7 and let me know when you've had an opportunity to do  
8 so?

9 A I've reviewed it.

10 Q Prior to today have you seen this document?

11 A Yes, I have.

12 Q Do you recall the time that you saw this?

13 A It was in March of this year.

14 Q When I say "you" I'm not trying to ignore the  
15 distinction between Acme and Access Bank but did  
16 Access -- when I say "you" did either Access or Acme  
17 approve this contract?

18 A Not formally in writing.

19 Q Did you have any objection to this contract  
20 proceeding?

21 A No.

22 Q Is this the contract that you spoke about in  
23 your testimony a few moments ago?

24 A Yes.

25 Q Could you take a look at paragraph four of the



1     **second page?**

2           A     Okay.

3           Q     Do you know whether that \$60,000 deposit was  
4     **paid?**

5           A     Do not.

6           Q     Now let me draw your attention to the, I  
7     **believe the 30th or the 31st of March this year. On**  
8     **one of those days was there a scheduled foreclosure**  
9     **sale?**

10          A     I believe there was.

11          Q     And you agree that that sale did not proceed?

12          A     That's correct.

13          Q     Why did that sale not proceed?

14          A     We had a contract, this contract.

15          Q     Was there -- did the, and I say the Amendolas  
16     **but I would want to include RMAA but did the Amendolas**  
17     **or RMAA make a payment to Access Bank to persuade**  
18     **Access not to proceed with the foreclosure?**

19          A     I believe they may have. I don't know for  
20     **sure.**

21          Q     Did they make a payment of \$80,000?

22          A     They may have. I don't remember.

23          Q     But do you agree that they made some payment?

24          A     I believe they did. I don't have the  
25     **transcript in front of me so I don't know for sure.**

1           **Q     Do you recall the last payment that was made**  
2     **on this loan?**

3           A     No. It was in March. That's all I remember  
4     and it could have been the \$80,000. I'm not saying it  
5     wasn't.

6           **Q     But if there was a payment made on March or**  
7     **April -- excluding the \$80,000 payment was there**  
8     **another payment made?**

9           A     I don't believe so.

10           MR. FOREST: Your Honor, I just want to show  
11     one document to Counsel before I approach the witness  
12     with it.

13           THE COURT: All right.

14           MR. O'DONNELL: Does he want me to hand it? I  
15     don't know what we're waiting on.

16           MR. FOREST: I'm sorry, Your Honor, I was  
17     giving him a chance to --

18           MR. O'DONNELL: What relevance does that have  
19     to 2010? It's not a 2010 statement.

20           MR. FOREST: Your Honor, I'd like to mark this  
21     and I only have one copy and would propose just to mark  
22     it as Exhibit B. If I could pass it to the Court, it's  
23     my only copy. I need to let the witness have it.

24           THE COURT: Hand it up here first and then  
25     we'll give it to the witness. Let me see it.

1 All right.

2 MR. FOREST: Your Honor, may I approach the  
3 witness? I just want to review the letter. Perhaps I  
4 can come --

5 THE COURT: Actually, you can ask him. If you  
6 can't then I'll let you go up there.

7 BY MR. FOREST:

8 Q Sir, in the top right hand corner of the  
9 letter you see some information that refers to the  
10 balance of the loan, I believe at the beginning of  
11 2009?

12 A Right.

13 Q Is it 2009?

14 A Right.

15 Q What was the balance at the beginning of 2009  
16 according to that document?

17 A \$2,027,621.95.

18 Q And what was the balance as of December 31st,  
19 2009 according to that document?

20 A \$1,731,958.50.

21 Q You can set that down, sir.

22 A Okay.

23 Q I don't have anything else on that right now.

24 Do you recall the amount of payments that were made to  
25 Access National Bank following the forbearance

1 agreement?

2 A No, I do not.

3 Q And sir, you had testified that within the  
4 first bankruptcy proceeding that was initiated for RMAA  
5 earlier this -- I shouldn't say "earlier" -- I believe  
6 this June?

7 A Right.

8 Q You testified that RMAA made no effort to  
9 reorganize?

10 A Right.

11 Q Was RMAA provided an effort to do so?

12 A No.

13 Q Why not?

14 A The case was dismissed.

15 Q On whose request?

16 A Our attorneys.

17 Q Do you recall the term of the forbearance  
18 agreement?

19 A No, I don't.

20 Q Do you have the white book up there?

21 A Yes, I do.

22 Q Could you take a look at Exhibit 17, paragraph  
23 3.3?

24 A It was supposed to expire on October 1st, 2010  
25 or on the occurrence of an event of default.

1           **Q     Are you aware of whether RMAA has the ability**  
2           **to provide adequate protection payments to Access?**

3           A     RMAA, the only asset I know that holds is the  
4           real estate. I would say that it's not.

5           **Q     I understand that, sir, but are you aware of**  
6           **whether RMAA has the ability to provide adequate**  
7           **protection payments?**

8           A     No.

9           MR. FOREST: Your Honor, I have no other  
10          questions for this witness but I would reserve the  
11          right to call Mr. Shoemaker in our case.

12          THE COURT: Now, did you want either Exhibit A  
13          or B admitted?

14          MR. FOREST: Not at this time.

15          THE COURT: Very well. Mr. O'Donnell,  
16          anything further?

17          MR. O'DONNELL: No, Your Honor.

18          THE COURT: All right, thank you.

19          THE WITNESS: Thank you.

20          MR. O'DONNELL: Your Honor, if I could call  
21          Gilbert Rogers I'll be very brief.

22          THE COURT: All right. Would you come on up  
23          to the Deputy Clerk's desk to be sworn, please?

24          //

25          //

1                   Whereupon,

2                                   GILBERT ROGERS

3                   was called as a witness on behalf of the  
4   Creditor and, having been first duly sworn, was  
5   examined and testified as follows:

6                                   DIRECT EXAMINATION

7                   BY MR. O'DONNELL:

8           **Q     State your name and business address, please.**

9           A     Gilbert Rogers.

10          **Q     Your business address?**

11          A     7880 Backlick Road, suite seven in  
12   Springfield, Virginia.

13          **Q     And Mr. Rogers, your occupation, please?**

14          A     I am a Residential Real Estate Appraiser.

15          **Q     Are you licensed in the Commonwealth of**  
16   **Virginia?**

17          A     I am certified in the Commonwealth of  
18   Virginia, yes.

19          **Q     And is the bulk of your experience in the**  
20   **Northern Virginia area in residential real estate?**

21          A     I have been doing appraisals since 1992 and I  
22   have probably done in excess of 8,000 appraisals in  
23   that time, all residential.

24                   MR. O'DONNELL: Your Honor, Mr. Forest and I  
25   have agreed to just stipulate as to Mr. Rogers'

1 qualification as an expert to testify on the valuation  
2 of residential real estate.

3 THE COURT: Based on that stipulation I'll  
4 approve him as an expert in --

5 MR. O'DONNELL: Save us some time.

6 BY MR. O'DONNELL:

7 **Q Mr. Rogers, in the book in front of you would**  
8 **you look at Exhibit number seven? Can you identify**  
9 **that exhibit, please?**

10 A It is the appraisal that I prepared for the  
11 subject property.

12 **Q When did you prepare this?**

13 A The effective date of the appraisal is August  
14 6th of this year and the signature date on the  
15 appraisal is August 10th of this year.

16 **Q And are you familiar with this property?**

17 A From an exterior inspection, yes, I am.

18 **Q And from any other source?**

19 A From previous appraisals done by other  
20 appraisers in our office.

21 **Q In fact, in preparation for this report you**  
22 **reviewed those also?**

23 A Yes, I did and I included some of the  
24 information regarding the interior of the property in  
25 this report since I did not have the advantage of

1 seeing the interior.

2 Q Can you tell me, please, what valuation  
3 methodology was utilized by you in order to prepare the  
4 estimate of value or opinion of value?

5 A I used the scales comparison approach.

6 Q And the reason for that, sir?

7 A The reason for that is that, well, first of  
8 all I considered the cost approach but the difficulty  
9 in determining a cost to construct when you don't have  
10 the advantage of seeing the inside would make it very  
11 unreliable.

12 The scales comparison approach is the most  
13 reliable and the most accepted methodology for  
14 appraising residential properties.

15 Q And did you ultimately arrive at an opinion of  
16 value with respect to the property?

17 A I did.

18 Q Can you tell the Court what that opinion is?

19 A That opinion is \$2,450,000.

20 Q Where is that reflected in the appraisal  
21 report?

22 A That's at the bottom of page two.

23 MR. O'DONNELL: Thank you. Your Honor, I move  
24 Exhibit number seven.

25 THE COURT: Without an objection it will be



1 received.

2 MR. FOREST: Your Honor, I want to -- Your  
3 Honor, my objection is that I don't know the extent to  
4 which that the Court is going to consider this the  
5 preliminary and final hearing and I'm just trying to  
6 preserve my point here, that we attempted to get  
7 appraisals of our own, weren't able to get one for  
8 today so I just want to state that as an objection.

9 THE COURT: I don't think that goes to the  
10 objection -- or the admissibility of a document itself  
11 and I --

12 MR. FOREST: I understand but --

13 THE COURT: I understand the argument and  
14 you're certainly free to make that at any closing as  
15 may be appropriate.

16 MR. O'DONNELL: That's all I have for Mr.  
17 Rogers.

18 THE COURT: Thank you. Did you have any  
19 cross-examination of the appraisal?

20 MR. FOREST: Your Honor, no questions.

21 THE COURT: Did you just use two comparables?

22 THE WITNESS: I'm sorry?

23 THE COURT: How many comparables did you use  
24 on this?

25 THE WITNESS: I used three.

1 THE COURT: Three. All right, I see the  
2 Ashburn, Leesburg, and Great Falls properties?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right, thank you very much.

5 THE WITNESS: Thank you.

6 THE COURT: Can he be excused?

7 MR. O'DONNELL: He may be excused, Your Honor.

8 THE COURT: May he be excused?

9 MR. FOREST: Yes.

10 THE COURT: Thank you for coming, Mr. Rogers.  
11 You're free to leave.

12 MR. O'DONNELL: Your Honor, I might have one  
13 or two questions for Mr. Amendola. In order to try and  
14 move this along I'd be willing to just address those  
15 during my cross-examination.

16 I don't know how we want to proceed but I'm  
17 trying to keep it as quick as possible. Other than  
18 that I have nothing else.

19 THE COURT: That will be fine. Mr. Forest?

20 MR. FOREST: Your Honor, I would call Brett  
21 Amendola.

22 THE COURT: All right, if you'll come forward,  
23 please, to be sworn.

24 MR. FOREST: Your Honor, at this time I would  
25 move in my A and B.

1 THE COURT: Any objection to A or B, Mr.  
2 O'Donnell?

3 MR. O'DONNELL: Your Honor, I'm going to  
4 object, yes. A, if it were going to come in would only  
5 come in, in order to identify the fact that this was a  
6 contract that Mr. Shoemaker was talking about.

7 It would come in for no other substantive  
8 effect. If he wishes to utilize it for some other  
9 effect including the fact that it may be operative  
10 there are other issues with respect to foundation and  
11 authenticity that will have to be overcome in order to  
12 be able to admit it.

13 THE COURT: What's the purpose of the?

14 MR. FOREST: Your Honor, I'll withdraw my  
15 motion on A at this time.

16 THE COURT: All right, and then B?

17 MR. O'DONNELL: B, I don't think it was  
18 authenticated by the witness, Your Honor. He showed it  
19 to him and asked him to read from it which he did but  
20 he didn't identify it or authenticate it so it's a  
21 statement issued to one of the Amendolas I think it  
22 probably gets authenticated through them.

23 It may be that Mr. Amendola can authenticate  
24 that but it does not appear to have been properly  
25 authenticated by Mr. Shoemaker.

1 THE COURT: I think that's right.

2 MR. FOREST: I'll withdraw B as well at this  
3 time.

4 THE COURT: Well, you're not withdrawing it.  
5 You're just going to withdraw the motion to admit it.

6 MR. FOREST: Withdrawing the motion.

7 THE COURT: You're certainly welcome to renew  
8 that motion if you wish. All right, please be sworn.

9 Whereupon,

10 BRETT AMENDOLA

11 was called as a witness on behalf of the  
12 Defendant and, having been first duly sworn, was  
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FOREST:

16 Q State your name for the record, please.

17 A Brett Amendola.

18 Q And your address, please?

19 A 43605 Solheim Cup Terrace, Ashburn, Virginia  
20 20147.

21 Q What is your relationship to Roger Amendola?

22 A He is my father.

23 Q And the two other members of RMAA Associates  
24 are your mother and your wife?

25 A That's correct.

1           **Q     Each of you holds a 25 percent interest in the**  
2     **company?**

3           A     That's correct.

4           **Q     Let me draw your attention to March of 2010.**  
5     **Was there a foreclosure sale that was scheduled?**

6           A     Yes, sir.

7           **Q     And do you know whether that foreclosure sale**  
8     **proceeded to fruition?**

9           A     It did not.

10          **Q     Did you take any steps to persuade Access Bank**  
11     **to terminate that foreclosure proceeding?**

12          A     During the month of March we had received a  
13     second offer on the property in the form of a formal  
14     contract. We discussed with the bank in depth that we  
15     were hoping to execute it because the price was  
16     sufficient to satisfy all of the lien holders.

17                 And in addition to ratifying the contract and  
18     binding it we had made a rather large payment to the  
19     bank.

20          **Q     And approximately how much did you pay to the**  
21     **bank?**

22          A     \$80,000.

23          **Q     And at that time had the bank requested a**  
24     **higher amount?**

25          A     Yes.

1 Q How much had they requested?

2 A \$104,000.

3 Q I assume then that you did not pay the  
4 additional \$24,000?

5 A No, sir.

6 Q So based upon the \$80,000 and the contract the  
7 bank terminated that sale proceeding?

8 A That is correct.

9 Q And they did so voluntarily?

10 A That is correct.

11 Q Are you familiar with, you've heard of the  
12 forbearance agreement that we've all discussed here  
13 today?

14 A Yes, sir.

15 Q Are you familiar with the payments that were  
16 made by RMAA after the forbearance agreement was  
17 executed?

18 A Yes, sir.

19 Q Do you recall the approximate amount of  
20 payments that were made?

21 A Yes, sir.

22 Q What were those amounts?

23 A There were two forms. The first form was to  
24 Access National Bank in accordance with the forbearance  
25 and that was \$50,000 per month.

1           That began in October when we executed the  
2   forbearance and we had subsequently made October,  
3   November, December, January, and the February and March  
4   payments were part of that \$104,000 of which we paid  
5   \$80,000 so a total of \$280,000 was paid to the bank  
6   after the forbearance was signed off on.

7           **Q     Now drawing your attention back to the**  
8   **contract do you have a copy of that in front of you by**  
9   **chance?**

10          A     I do, sir.

11          **Q     If you would -- there are some initials on**  
12   **each of the pages. Do you see where it says, "please**  
13   **initial, seller"?**

14          A     Yes, sir.

15          **Q     Do you recognize those initials?**

16          A     I do.

17          **Q     Whose initials are those?**

18          A     My father's.

19          **Q     And if you look at page 10 of 10 is that your**  
20   **father's signature there as well?**

21          A     Yes, sir.

22          **Q     Now before this contract was signed -- strike**  
23   **that. Who is Todd Tarring?**

24          A     Todd is the second trust holder.

25          **Q     Before this contract was signed by your father**

1 did you or anyone at RMAA have any discussions with  
2 Todd Tarring?

3 A Yes, we did.

4 Q And did those discussions involve determining  
5 what balance was due or the amount that he would accept  
6 on this --

7 A It did.

8 MR. O'DONNELL: Objection --

9 MR. FOREST: -- payment of this loan?

10 MR. O'DONNELL: Objection, hearsay.

11 THE COURT: You're going to ask him how much?

12 MR. FOREST: No.

13 THE COURT: Okay. He knows how much. He's  
14 not going to tell me. Go ahead. I think your  
15 objection was premature, Mr. O'Donnell.

16 BY MR. FOREST:

17 Q Based on the discussions that you had -- did  
18 you have those discussions with Mr. Tarring?

19 A I did.

20 Q And based on those discussions were you  
21 comfortable that this property could be sold for  
22 \$4,150,000 and satisfy Mr. Tarring's lien?

23 MR. O'DONNELL: Objection, hearsay, Your  
24 Honor. I mean, we're getting around --

25 THE COURT: I do think that.



1 MR. O'DONNELL: If I can't do it through my  
2 expert witness he can't come around the other corner.

3 THE COURT: With his lay witness. Isn't the  
4 foundation of the answer to his based on hearsay? I  
5 accept -- I don't think there's any -- well, did you  
6 believe that this contract would pay everyone off?

7 THE WITNESS: Yes, sir.

8 THE COURT: I think that's all that you need.

9 MR. O'DONNELL: Then why doesn't my letter  
10 where Mr. Tarring says his claim is \$4,000,000 come in,  
11 Your Honor? I mean, if they're going to get that in  
12 there should be a quid pro quo.

13 That's hearsay. It's pure hearsay.

14 THE COURT: Yeah, how much weight am I going  
15 to give it?

16 MR. O'DONNELL: Okay.

17 THE COURT: He may believe that for whatever  
18 reason but he is not the second trust holder and I  
19 don't have a payoff statement from him which would do  
20 that but he obviously entered into the contract with  
21 some expectation.

22 If it was clearly insufficient there had to be  
23 some arrangement or something but I don't know what  
24 it's worth but he thought the contract would have been  
25 sufficient, is his testimony.

1 MR. FOREST: That's what I'm --

2 THE COURT: All right.

3 BY MR. FOREST:

4 Q And you provided a copy of this contract to  
5 Mr. Shoemaker?

6 A Yes, sir.

7 Q And to your knowledge is this a true and  
8 accurate copy of the contract between RMAA and Ms.  
9 McManis?

10 A It is.

11 MR. FOREST: Your Honor, I would move  
12 Defendant's Exhibit A in at this time.

13 MR. O'DONNELL: Let me state my objections,  
14 Your Honor. They are multiple. To the extent that  
15 they offer it in evidence to be able to establish the  
16 agreement of any third party to purchase the property  
17 at any agreed price, it is hearsay.

18 It is therefore inadmissible. To the extent  
19 that they simply offer to suggest that they have had  
20 discussions with somebody I suppose it might be  
21 acceptable.

22 However, this witness cannot authenticate the  
23 contract, Your Honor, and they cannot authenticate it  
24 for the following reason. RMAA who is the purported  
25 seller under the contract is a manager managed entity,

1 Your Honor.

2 It is not run, operated, or managed through  
3 its members. The witness is a member only. He is not  
4 the manager or a manager of RMAA, neither is he the  
5 signatory to the contract either in an individual or  
6 representative capacity.

7 The signatory to the contract purportedly on  
8 behalf of RMAA is Roger Amendola who is a manager of  
9 the entity, is authorized to act on behalf of the  
10 entity, and through whom the document could be  
11 authenticated properly for the purposes of admission  
12 under the federal rules of evidence.

13 I think for the reason that it is hearsay and  
14 that it has a lack of proper authentication and  
15 foundation it does not come in.

16 MR. FOREST: Your Honor, if I may respond in  
17 part to that. The one difficulty that we have today is  
18 that Mr. Amendola is in Maine as we speak because his  
19 sister was diagnosed with stage four cancer.

20 He had to go up there and assist her. I  
21 certainly would want to move the evidence in  
22 substantively as evidence and I don't mean to get --

23 THE COURT: Well, the authenticity only goes  
24 as, is this a contract that was executed. It need not  
25 be authenticated by a signatory to that or a member.

1           It just needs to be someone who knows what's  
2   going on and says, yes, this is the contract, and if  
3   you lay that foundation that's sufficient. It's not  
4   much more than that.

5           MR. O'DONNELL: What about the hearsay  
6   objection, Your Honor? To the extent that it's being  
7   offered and I assume it's being offered to establish  
8   that there's --

9           THE COURT: This is -- it's being offered to  
10   show that there was a contract and that this is the  
11   contract for what it's worth and you can argue that and  
12   it does come in.

13           How else do you do it? Do you always get the  
14   other side of the contract in?

15           MR. O'DONNELL: I think if the ultimate effect  
16   of this or purpose of this is to tell the Court, I've  
17   got a \$4.1 million contract which my client testified  
18   to, was not performed and was dead and that was upon a  
19   party admission not hearsay.

20           Then I think you do have to bring the other  
21   party to come here and say that. Otherwise what  
22   they're saying is, I want to take this lady's  
23   admissions, I want to take her representations that  
24   she's willing to buy the property and admit them  
25   substantively to the Court to prove that there's a deal

1 that's extent or available. That is hearsay.

2 THE COURT: The hearsay is overruled.

3 How do you know that this was the contract  
4 that was signed?

5 THE WITNESS: I was actually a party to the  
6 negotiations.

7 THE COURT: Were you there when it was signed?

8 THE WITNESS: I was.

9 THE COURT: That's pretty good, Mr. O'Donnell.  
10 I think that authenticates it pretty well.

11 MR. O'DONNELL: Okay, Your Honor.

12 THE COURT: I'll admit it.

13 (The item referenced above,  
14 previously marked for  
15 identification as  
16 Defendant's Exhibit A, was  
17 received into evidence.)

18 BY MR. FOREST:

19 **Q Now, Mr. Amendola, do you know who the selling**  
20 **broker was for this transaction?**

21 A I believe it was Long & Foster.

22 **Q But do you know the name of the individual,**  
23 **the licensee?**

24 A It was either my mother or my wife, who are  
25 both licensed agents with Long & Foster. I'm not sure.

1           Q     Let me draw your attention to page 10 of 10  
2     and of course the tenth page of the document.

3           A     It says "Long & Foster Reston" and it has an  
4     agent i.d. number of 14822 but I'm not sure if that's  
5     Maureen Amendola or Janet.

6           Q     I'm actually trying to draw your attention to  
7     the Carthagen Court.

8           A     Yes, that's --

9           Q     Who's office is at 21109 Carthagen Court?

10          A     Cora McManis, the purchaser.

11          Q     Was she acting as her own broker?

12          A     She was.

13          Q     And she is licensed?

14          A     She is.

15          Q     Was Ms. McManis buying this property in her  
16     own right or do you know whether she was --

17               MR. O'DONNELL:  Objection, Your Honor.  Now  
18     we're getting into speculating on what the purchaser  
19     intended to do or thought she was doing and I don't  
20     think the witness is capable of testifying to that.

21               THE COURT:  I don't know if he's capable.  
22     That goes to foundation as to how he would know that.  
23     I don't know that he would know that and I don't know  
24     if he would know it on a basis other than hearsay.

25               I don't know that so if you want to do that --

1 I think that it is an appropriate course of inquiry. I  
2 don't know where it leads but you still need to lay  
3 some foundation as to how he would know that.

4 BY MR. FOREST:

5 Q You have met Ms. McManis?

6 A Yes, sir.

7 Q And you met her as a part of a process where  
8 she made some inquiry and ended up signing a contract  
9 for this property?

10 A That is correct.

11 Q And she was a real estate licensee or broker?

12 A That is correct/.

13 Q With which company, do you know?

14 A I believe she owns her own company, Virginia  
15 Select Properties.

16 Q Did Ms. McManis perform on this contract?

17 A She did not.

18 Q Do you know why she did not?

19 A I do.

20 Q Why is that?

21 MR. O'DONNELL: Can we lay a foundation, Your  
22 Honor? Again, I think to the extent that this comes  
23 about can only be based on hearsay.

24 BY MR. FOREST:

25 Q Do you know whether Ms. McManis performed on

1     **this contract?**

2           A     I do.

3           Q     **What is your source of information?**

4           A     Directly from her.

5           Q     **Did she tell you why she did not perform?**

6           A     She did.

7           Q     **And what did she tell you?**

8                   MR. O'DONNELL:  Objection, hearsay, Your  
9     Honor.

10                   THE COURT:  I think that is hearsay.  Is there  
11     an exception that you're aware of for that?

12                   MR. FOREST:  Well, Your Honor, I'd like to  
13     make a proffer without cluing the witness in.  Let me  
14     withdraw that.  I think I can come to that in a  
15     different place.

16                   THE COURT:  Very well.

17                   BY MR. FOREST:

18           Q     **Did you provide assistance to RMAA Real Estate**  
19     **Holdings in other contracts?**

20           A     I did.

21           Q     **Or in other instances where people wanted to**  
22     **buy the property?**

23           A     I did.

24           Q     **Were there any difficulties that you faced in**  
25     **dealing with these other folks?**



1 A Yes.

2 Q What were those difficulties?

3 A Because of the significance of the property.

4 It was very well known in the community throughout  
5 Loudoun County given the size and kind of history  
6 behind it.

7 In trying to ratify a contract for fair market  
8 value it was very difficult because of the litigious  
9 background, that the property, as everyone has  
10 testified was subject to a multitude of previous  
11 efforts to foreclose.

12 When a property of this substance -- when it's  
13 a buyer's market, real estate market it's difficult and  
14 you have a substantive asset like this it is often  
15 difficult to get over the stigma associated with the  
16 asset.

17 And in negotiating contracts it became very  
18 difficult to try to achieve a fair market price when  
19 people are under the assumption they could steal it at  
20 a foreclosure.

21 Q And based on the -- do you recall the name of  
22 any other individual who expressed interest in  
23 purchasing the property?

24 MR. O'DONNELL: Hearsay, Your Honor.

25 THE COURT: I'll allow the question. Just the

1 question that you've asked, and then we can go from  
2 there, Mr. O'Donnell.

3 BY MR. FOREST:

4 Q Do you recall the name of any other individual  
5 you discussed, that you dealt with in terms of selling  
6 the property?

7 A Yes, sir.

8 Q And who else did you deal with?

9 A There have been calls on a weekly basis  
10 regarding the property and its status and we've  
11 received in the last six months a total of four written  
12 offers of which two came --

13 MR. O'DONNELL: Hearsay and best evidence  
14 rule, Your Honor.

15 THE COURT: It's overruled.

16 MR. O'DONNELL: Overruled?

17 THE COURT: Yeah.

18 MR. O'DONNELL: We're talking about a written  
19 document, Your Honor, that he's received four written  
20 offers. If that comes into evidence that's hearsay to  
21 establish that they've actually been made.

22 THE COURT: No, he's setting the foundation  
23 for what he may go on. He's not asking for the content  
24 of them. At this particular time he's asking for the  
25 activity that was out there and that's all that he

1 wants to put in.

2 There is a limit to which you can go but at  
3 this point he's just getting the activity.

4 BY MR. FOREST:

5 Q Okay, let me change gears. Are you familiar  
6 with a gentleman by the name of David Caseman?

7 A David Caseman, yes, sir.

8 Q Who is he?

9 A He was an individual that early in 2010  
10 submitted a written offer.

11 Q And do you recall the amount of that written  
12 offer?

13 MR. O'DONNELL: Objection, Your Honor, best  
14 evidence rule.

15 THE COURT: It's overruled.

16 THE WITNESS: \$3.8 million.

17 MR. O'DONNELL: Standing objection, Your  
18 Honor. I understand the Court's ruling.

19 THE COURT: I understand. That's fine.

20 MR. O'DONNELL: I'm not arguing. I would just  
21 like a standing objection on these issues because he's  
22 going to ask the same thing. I don't want to have to  
23 interrupt the Court, Your Honor.

24 THE COURT: All right, that's fine.

25 BY MR. FOREST:

1           Q     And do you know whether the discussions with  
2     Mr. Caseman bore fruition?

3           A     They did not.

4           Q     Do you know why they didn't?

5                     MR. O'DONNELL: Foundation, Your Honor. It's  
6     going to be hearsay.

7                     THE COURT: You do need to --

8                     MR. FOREST: I'll withdraw that last line.

9                     THE COURT: I'm not quite sure where he'd  
10    derive that from other than from the other party.

11                    BY MR. FOREST:

12           Q     Is Exhibit B before the?

13           A     No, sir.

14           Q     Now could you in summary terms explain to the  
15    Court the actions that RMAA could take to reorganize  
16    itself?

17           A     It is our understanding after seeking Counsel  
18    that we had a few options available to us in order to  
19    try to protect the creditors and the unsecured  
20    creditors with this asset, one of which was an  
21    involuntary petition as a creditor.

22           Q     Let me try and redirect your question. In  
23    plain English how are you going to get out of this?  
24    How is RMAA going to get itself out of the financial  
25    troubles that it has?

1           A       We've got two options. One would be to  
2       satisfy all the lien holders to include Access Bank and  
3       that can be done through a refinance or through a  
4       payoff and the second would be to sell the property.

5           **Q       And could you explain to the Court the means**  
6       **that RMAA has to refinance this loan, and by "this**  
7       **loan" I mean their first trust loan?**

8           A       Yes, there are multiple options when it comes  
9       to the payoff and the refinance, the first being  
10      seeking an alternative source of funding to take out  
11      the banks.

12                 The second would be to utilize our own  
13      personal assets as a family to pay off the loan and the  
14      third would be, like I had mentioned before ratifying a  
15      contract for a price high enough to pay off all of the  
16      creditors secured and unsecured.

17           **Q       Now have you identified an individual who**  
18       **would be willing to provide financing?**

19           A       I have.

20                 MR. O'DONNELL: It's hearsay, Your Honor.

21                 THE COURT: Neither that question nor the  
22      answer is hearsay. He simply says he knows of a  
23      lender.

24                 MR. O'DONNELL: Well, Your Honor, I understand  
25      that we sort of leapt beyond the horse and the cart.

1 The foundation would have to come about by virtue of  
2 asking him, how do you know that there's somebody  
3 willing to make it?

4 And the testimony proffered would be that, I  
5 know because they said so. You can't have any other  
6 basis for it,. It has to be hearsay.

7 THE COURT: It's overruled. Go ahead, please.

8 BY MR. FOREST:

9 Q And does RMAA have any liquid assets that --  
10 in the immediate future does RMAA have liquid assets  
11 that would be available to it to help it refinance or  
12 pay off this note?

13 A Yes, sir.

14 Q Approximately what sort of funds might be  
15 available in the near term?

16 A Just through transactions that are scheduled  
17 to close within the next 30 days, approximately  
18 \$500,000.

19 Q And without testifying as to what Mr. Tarring  
20 said, based on your conversations with him are you and  
21 is RMAA willing to proceed with an effort to refinance  
22 this loan with Access National Bank?

23 A Yes, sir.

24 Q And likewise, is RMAA willing to proceed to  
25 simply -- strike that. Is RMAA willing to proceed with

1       **efforts to sell the property on a fair market basis?**

2           A       Yes, sir.

3           **Q       And is RMAA willing to dedicate substantial**  
4       **assets in terms of dollars, energy, and effort towards**  
5       **meeting either or both of those objectives?**

6           A       Yes, sir.

7           **Q       Do you know whether RMAA had the ability to --**  
8       **excuse me, do you know whether RMAA was able to put**  
9       **forth a plan of reorganization in the first bankruptcy**  
10       **proceeding that was filed?**

11          A       We were able to.

12          **Q       A plan of reorganization?**

13          A       We weren't able to. We were trying to. We  
14       were going to.

15          **Q       And would the intent of such a plan be to pay**  
16       **all creditors 100 percent?**

17          A       Yes, sir.

18          **Q       And why is that?**

19          A       That's the intent of us as the guarantors.

20               MR. FOREST: Your Honor, could I, I say  
21       withdraw but I think the Court or the Clerk may have  
22       Exhibit B.

23               THE COURT: I think it's up at the witness  
24       stand. You can go look up there if you'd like.

25               BY MR. FOREST:

1 Q Could you identify that document, please?

2 A Yes, this is a year end statement from Access  
3 National Bank dated December 31st, 2009 in regard to  
4 our construction loan with Access National Bank.

5 Q At the very top of the page does it indicate a  
6 balance as of January 1st, 2009?

7 A It does.

8 Q What balances does it show?

9 A \$2,027,621.95.

10 Q And does that also show a balance as of  
11 December 31st, 2009?

12 A It does.

13 Q And what balance is set forth there?

14 A \$1,731,958.50.

15 Q Do you believe that those numbers are accurate  
16 as to the balance at the beginning of 2009 and the  
17 balance at the end of 2009?

18 A I do.

19 Q Do you recall the amount of payments that --  
20 perhaps not the specific but do you recall the amount  
21 of payments that were made on this loan during 2009?

22 A I'm going to give a range because I don't have  
23 the specifics in front of me but I know it was in  
24 excess of half a million dollars or \$500,000.

25 Q Would those payments have been spread -- do



1     **you recall the frequency of those payments? Were there**  
2     **12 equal payments or how did they come about, plus or**  
3     **minus?**

4           A     In accordance with this statement it shows  
5     payments in February, March, May, two in May, and then  
6     October, November, and December so a total of nine  
7     payments were made.

8           Q     And according to that statement do you have  
9     the -- can you calculate or does that refresh you as to  
10    the aggregate amount of payments that were made?

11          A     In total principal that was paid down on the  
12    loan it was \$295,663.45 but it does not show the  
13    interest that was paid on it.

14          Q     Do you recall the date of the last payment  
15    that RMAA made on this facility?

16          A     Yes.

17          Q     What was that?

18          A     It was an \$80,000 payment on March 30th, 2010.

19          Q     Could you take a look at Exhibit one in the  
20    white binder?

21          A     Yes, sir.

22          Q     Do you see -- let me draw your attention to  
23    paragraph 3-B.

24          A     Yes, sir.

25          Q     Could you tell the Court what the initial

1     monthly payment was under this loan?

2           A     \$16,903.50.

3           Q     If the Court were to grant relief from the  
4     stay and allow Access National Bank to foreclose could  
5     RMAA put forth a plan of reorganization?

6           A     I'm not sure. No, we would not be allowed to  
7     if they were allowed to foreclose.

8           Q     Now you heard testimony from Mr. Harvill about  
9     some, I don't even want to call them liens; memorandums  
10    and mechanic's liens that were filed and testimony  
11    regarding HOA dues, et cetera, have some of those been  
12    entirely satisfied?

13          A     Yes, sir.

14          Q     And have those that perhaps haven't been  
15    entirely satisfied been substantially curtailed?

16          A     Yes.

17          Q     Do you know whether there was -- do you know  
18    what an MLA is?

19          A     I do not.

20          Q     A mechanic's lien agent?

21          A     Okay, yes, sir.

22          Q     Do you know whether there was a mechanic's  
23    lien agent appointed for this?

24          A     There is.

25          Q     And who is that?

1 A Mr. Thomas Wiltshire, Esquire, of Key Title.

2 Q Since January 1st of 2009 have you filed for  
3 bankruptcy?

4 A No, sir.

5 Q Now Mr. Shoemaker had also testified that they  
6 wanted some funds paid into a, for lack of a better  
7 term, construction account. Were any of those funds  
8 paid in?

9 A Yes, sir.

10 Q Do you recall how much was paid in?

11 A In the accounting that myself and my father  
12 did for Brevon within the last six months I believe --  
13 well, within the last nine months since the forbearance  
14 was executed, over \$250,000.

15 Q Where is your father today?

16 A In Maine.

17 Q Why is he in Maine?

18 A My mother and father went up there to help my  
19 aunt who was diagnosed with stage four cancer and is  
20 having a double mastectomy and some lymph nodes  
21 removed.

22 Q And following -- have you made an effort to  
23 get an appraisal, a third party appraisal for this  
24 property?

25 A Yes, upon receiving notice of today's motion

1 we have submitted requests for three BPOs, broker  
2 opinion letters as well as an additional certified  
3 appraisal.

4 Q Were you able to obtain any of those?

5 A Not this quickly.

6 Q How quickly do you believe that RMAA could  
7 close upon a refinance of the loan with Access National  
8 Bank?

9 MR. O'DONNELL: Objection, speculation, Your  
10 Honor.

11 THE COURT: Overruled.

12 THE WITNESS: It would take between 30 and 60  
13 days at the longest.

14 BY MR. FOREST:

15 Q And is RMAA asking the Court to allow it to  
16 make adequate protection payments so that RMAA can put  
17 forth a plan of reorganization?

18 A Yes, sir.

19 Q And does RMAA have the ability to make  
20 adequate protection?

21 A Yes, sir.

22 MR. FOREST: Your Honor, I'd move in Exhibit  
23 B, Defendant's B.

24 THE COURT: Any objections? Show it to Mr.  
25 O'Donnell.

1 MR. O'DONNELL: I just want to make sure.

2 That's in the name of Brett and Janet? No objection,

3 Your Honor. It's Mr. Amendola's statement.

4 THE COURT: All right, it will be admitted.

5 (The item referenced above,

6 previously marked for

7 identification as

8 Defendant's Exhibit B, was

9 received into evidence.)

10 MR. FOREST: No other questions, Your Honor.

11 THE COURT: Thank you.

12 CROSS EXAMINATION

13 BY MR. O'DONNELL:

14 Q Mr. Amendola, what assets does RMAA own?

15 A I believe the only asset that it owns is the  
16 single purpose asset which is the home on Riverlook.

17 Q It's the house that we're talking about?

18 A Yes, sir.

19 Q That's all, right?

20 A Yes, sir.

21 Q There's no other assets of any kind?

22 A Correct.

23 Q RMAA is not the owner of any contract rights  
24 or receivables or anything else?

25 A No, sir.

1           Q     So when you talked earlier with Mr. Forest and  
2     said that RMAA has \$500,000 of transactions that are  
3     set to close over the next 90 days you're not talking  
4     about assets controlled by RMAA, are you?

5           A     By the members of RMAA.

6           Q     You're talking about your family members?

7           A     Correct.

8           Q     But they're under no written obligation to  
9     contribute any capital to RMAA at this time, are they?

10          A     I don't believe so.

11          Q     With respect to the efforts to refinance or  
12     sell the property you really, you could have done that  
13     at any time over the past two and a half years, could  
14     you not?

15          A     We've been trying.

16          Q     You have? You've just been unsuccessful  
17     during that period?

18          A     That's subject to -- it's a subjective answer.

19          Q     It hasn't occurred yet, correct?

20          A     Correct.

21          Q     Thank you. And it's correct that there have  
22     been no tax payments for the real estate taxes for  
23     2008, 2009, and 2010, correct?

24          A     No, that is inaccurate.

25          Q     Tell me, please, what has been paid?

1           A     In 2009 we had it reassessed because the  
2     property had gone up 40 percent in value when there was  
3     no construction being done. That was done at the  
4     beginning of 2010.

5           Q     Listen to my question. I asked you, there  
6     have been no payments of 2008, 2009, and 2010 real  
7     estate taxes; is that correct?

8           A     And that is not correct.

9           Q     Then I asked you, please tell me what payments  
10    have been made?

11          A     I know that we had negotiated a payment plan  
12    within the last six months and I believe two payments  
13    of \$5,000 have been made in accordance with that plan.

14          Q     So approximately \$10,000 in total?

15          A     Correct.

16          Q     And that other than that the '08, '09, and '10  
17    tax liabilities are outstanding to the best of your  
18    knowledge?

19          A     To the best of my knowledge.

20          Q     And there have been no payments to Mr. Tarring  
21    either; is that correct?

22          A     That is inaccurate as well.

23          Q     Tell me how much money and when it was paid to  
24    Mr. Tarring.

25          A     He's received \$75,000 in payments and I

1 believe it was in 2008, the end of 2008 is when he  
2 received the last payment.

3 Q At the end of 2008?

4 A Correct.

5 Q And a total of \$75,000?

6 A That is correct.

7 Q To the best of your understanding is that  
8 applied against accrued interest on the note?

9 A I don't know how Mr. Tarring accounted for it.

10 Q But you understood there to be interest  
11 accruing on the obligation, correct?

12 A Yes.

13 Q It is a \$1,000,000 note, of the face value?

14 A That is correct.

15 Q And you understand that to be accruing at five  
16 percent per month?

17 A That's what the note says but that's not what  
18 we've been talking about over the last three years.

19 Q But you don't have anything in writing to  
20 indicate that anything other than the note controls; is  
21 that correct?

22 A I have a significant amount of correspondence  
23 via e-mail that we've talked about in regards to  
24 buyouts or payoffs.

25 Q You didn't bring any of that with you today,



1 did you?

2 A I didn't know that we were going to have a  
3 full fledged hearing so I wasn't --

4 Q You didn't bring any of that today, sir,  
5 correct?

6 A No, sir.

7 Q And you are familiar with Exhibits 17 and 18,  
8 are you not, Mr. Amendola? That would be the  
9 forbearance agreement and the operating agreement of  
10 RMAA?

11 A Yes, sir.

12 Q And you signed each of those, correct?

13 A Yes, sir.

14 Q And you are aware of the provisions requiring  
15 the express consent of Acme to affect any bankruptcy  
16 filing on behalf of RMAA when you signed both  
17 documents, correct?

18 A Yes, sir.

19 Q And in fact, when you had discussions with Mr.  
20 Shoemaker and the bank representatives about effecting  
21 this forbearance, that was an express condition of the  
22 bank in terms of entering into the forbearance,  
23 correct?

24 A The bank basically wrote the document and  
25 mandated that it was staying as-is. We had no power to

1 change it at all.

2 Q Do you remember discussing this with Mr.

3 Shoemaker and the bank at that time?

4 A I don't recollect. We just signed it because  
5 that was our only option.

6 Q Did you read this before you signed it?

7 A I did.

8 Q You understood it, correct?

9 A Yes, sir.

10 MR. O'DONNELL: That's all I have, Your Honor.

11 THE COURT: All right, anything further?

12 MR. FOREST: No other questions, Your Honor.

13 THE COURT: All right, thank you, you can have  
14 a seat.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Did you have anything further to  
17 present?

18 MR. FOREST: Your Honor, the only thing that I  
19 would have further -- and well, I don't mean to be too  
20 lighthearted about it but this is what's left of my  
21 raft of hearsay documents.

22 We would just like to have this marked as  
23 Exhibit C. Obviously I'm not even going to pretend  
24 I've got the foundation to put it into evidence but  
25 this is just my proffer as a part of my -- and I

1     hesitate to call it a continuance of the hearing  
2     because I understand the Court is going to take  
3     appropriate action.

4             But I'm just going to very quickly ask the  
5     Court just to take a quick look at --

6             MR. O'DONNELL: Your Honor, before we start  
7     looking at it in substance, Your Honor --

8             MR. FOREST: Your Honor, I'm not asking you to  
9     look at it in substance. I'm just --

10            THE COURT: What are you trying to, what's  
11     your proffer?

12            MR. FOREST: My proffer is that we had an  
13     appraisal of the property for \$5.2 million two years  
14     ago. I certainly understand that that's a long time  
15     ago and I certainly understand that things have  
16     happened.

17            But I don't just want to blithely ask this  
18     Court to keep the record open so that we can put on  
19     evidence of a value but we did the best we could to try  
20     and get this appraisal updated and weren't able to do  
21     so in the short term.

22            So I just want to make that proffer and I'll  
23     just leave it at that.

24            THE COURT: So what you're saying is you've  
25     got an appraisal dated March 17th, 2008 at \$5.2 million

1 and you've endeavored to have it updated but you've not  
2 been successful in the short time you've had?

3 MR. FOREST: I've endeavored to have it  
4 updated through Mr. -- and I hate to say I didn't ask  
5 Mr. Amendola this but I asked him to contact this  
6 individual.

7 I can only assume it's Mr. Lou Lossie and we  
8 just weren't able to come up with that today.

9 THE COURT: All right, I understand. Anything  
10 further, Mr. O'Donnell?

11 MR. O'DONNELL: No, Your Honor, just argument.

12 THE COURT: All right, go ahead, please.

13 MR. O'DONNELL: Thank you. Your Honor, we've  
14 spent a little bit of time on what I might characterize  
15 as a detour from our principal grounds for relief.

16 Although we have certainly alleged that there  
17 is a lack of equity in the property and that  
18 reorganization is not a prospect and I don't know  
19 really that I would think that there's any alteration  
20 or evidence that would change that perception from my  
21 perspective, at least, today.

22 The principal grounds for relief are under  
23 (D) (1) and D-4 and I will tell the Court that the  
24 emphasis behind the motion that was filed with this  
25 Court last week, and the reason for the expedited

1 relief and hearing was because of what we perceive as a  
2 pattern of conduct implemented to delay, hinder, and  
3 defraud Access and the exercise of its rights.

4 Action that is a basis for relief under D-4,  
5 not just with respect to granting relief to the  
6 property but to provide effectively in rem relief as to  
7 the property and to make that order granting relief  
8 binding upon subsequent bankruptcies that might be  
9 filed with respect to the property in the future.

10 I want to address (D) (1) and D-4 for a moment.  
11 (D) (1), Your Honor, was filed with respect to cause and  
12 effectively the allegation and the claim is that cause  
13 exists because the petition was filed in bad faith.

14 And Your Honor, when you look at those things,  
15 you know, if you look at any individual case it is  
16 sometimes hard to look at anything in a vacuum or in  
17 the context of that one limited case and have enough  
18 information to determine or ascertain that it was filed  
19 in bad faith.

20 But the old adage or saying that everyone has  
21 20/20 hindsight is applicable here because we have the  
22 benefit of hindsight in this case.

23 You have not just the filing of this case,  
24 Your Honor, and the circumstances that surround the  
25 involuntary petition filed here but you have a history

1 and pattern of conduct with four separate filings,  
2 dismissals, failures to file verified statements,  
3 failure to file statements and schedules required by  
4 the Court.

5 You have filings by entities that were not in  
6 the chain of title and demands to cease and desist all  
7 foreclosure activity.

8 You even have what I would characterize, Your  
9 Honor, as a patently incorrect and fraudulent filing  
10 immediately preceding this case where this very same  
11 group of principals effected a filing against RMAA in  
12 their capacity as members where Mr. Forest and the  
13 Amendolas signed an involuntary petition and said,  
14 "this is a partnership" even though the official form  
15 that was approved by Congress now includes a  
16 parenthetical under corporation which says, "includes  
17 LLC and LLP."

18 Obviously that issue was addressed and dealt  
19 with by Judge Mitchell but Your Honor, where you have a  
20 history of dilatory filings, where you have no effort  
21 or attempt to do anything with those filings other than  
22 effect a delay of the foreclosure and I understand they  
23 didn't file Chapter 11s in all of the cases, Your  
24 Honor.

25 But the evidence that's before the Court is

1 that they clearly did not intend to follow through with  
2 any aspect of several of these filings.

3 The filing by Brevon Development was dismissed  
4 for failure to file schedules and statements. That was  
5 a voluntary and conscious act by the Amendolas.

6 The filing of Roger Amendola was dismissed for  
7 failure to file schedules and statements. They didn't  
8 just fail to effect any attempt to reorganize or effect  
9 payment of claims, Your Honor.

10 They failed to properly prosecute the  
11 bankruptcy filings themselves. They got protection and  
12 they got the delay of the foreclosure which is what  
13 they wanted because each and every one of these prior  
14 filings was made the day before or the day of a  
15 scheduled foreclosure sale.

16 They were filed without basis and the  
17 initially filing of RMAA without basis at law. Your  
18 Honor, I've cited at case to you in the matter of in  
19 re: Bradley which is a Judge Shelley opinion back when  
20 he was sitting down in Richmond.

21 And he addressed then the then novel question  
22 of whether or not cause under (D)(1) includes a lack of  
23 good faith in filing. Judge Shelley reasoned, and this  
24 has been picked up on and continued throughout  
25 subsequent cases, that "conduct which would warrant a

1 dismissal of the entire Chapter 11 case for cause on  
2 the basis of a lack of good faith is sufficient to  
3 satisfy the cause requirement for relief from stay  
4 under 362(D)."

5 And he went through an analysis of a case  
6 where it was a two party dispute. The entity or the  
7 debtor at that time was not engaged in business.

8 And there were filings made that were made  
9 immediately preceding a foreclosure or scheduled  
10 foreclosure that appeared to be filed for no other  
11 purpose other than to delay and stop the foreclosure  
12 process.

13 Judge Shelley said that, "it's the opinion of  
14 the Court that when a debtor on the eve of foreclosure  
15 twice files for relief under Title 11 in order invoke  
16 the provisions of 362 and adjoin a creditor's  
17 contractual and statutory rights to liquidate its  
18 indebtedness."

19 And under the additional circumstances present  
20 in this case I said, it's a two party dispute. The  
21 debtor is really not engaged in business which is the  
22 same thing here.

23 That cause exists under 362(D) for relief from  
24 the automatic stay. This is particularly true when the  
25 debtor has filed for relief under Title 11 three times



1 in the last two years and the same creditor has been  
2 forestalled from proceeding.

3 Your Honor, we believe that cause exists under  
4 362(D)(1) for lack of good faith in the filing of this  
5 incident petition.

6 We also submit, Your Honor, I'm going to skip  
7 over (D)(2) for a moment and address 362(D)(4) which  
8 says, Your Honor, that if the Court finds that "the  
9 filing of the petition was part of a scheme to delay,  
10 hinder, and defraud creditors that involve multiple  
11 bankruptcy filings affecting the same real property  
12 that it may grant relief.

13 And it may make that relief in rem relief.  
14 Your Honor, I don't know how else we could establish or  
15 what additional facts would be required to establish a  
16 scheme to delay, hinder, and defraud Access other than  
17 the fact pattern that has existed for the last year  
18 with respect to this property.

19 We have five filings now. Not only do we have  
20 five filings and an inability or failure to prosecute  
21 those filings but we also have foreclosures where the  
22 principals of the debtors showed up, submitted bids,  
23 and then failed to close under the contracts.

24 And of the five filings, Your Honor, one was  
25 legally invalid and insufficient as a matter of law,

1 the LLC or partnership filing or RMAA.

2 One entity was not in the chain of title but  
3 there were demands from Counsel to cease and desist the  
4 foreclosure and you heard Mr. Harvill testify that he  
5 felt obligated to do so, so that there was no chance he  
6 would violate an automatic stay.

7 Two were dismissed by local rule for failure  
8 to file schedules. The hinder and delay aspect of  
9 those components, Your Honor, is present and really  
10 what is required and the inference that the Court must  
11 draw is that the activities of these principals and the  
12 conduct of the parties also evidence an intent to  
13 delay, to defer Access National Bank with respect to  
14 the enforcement of its rights and remedies.

15 That, Your Honor, may be inferred from the  
16 history of these parties and with respect to that, Your  
17 Honor, I've cited you to the bankruptcy case out of the  
18 Eastern District of New York, in re: Montalvo at 416  
19 BR 381.

20 Montalvo, Your Honor, is very conspicuously  
21 similar to the case that you have before you today.  
22 There were six separate bankruptcy filings, three by  
23 the individual, three by his entity, some of which  
24 occurred after the entity and the individual were no  
25 longer in the chain of title but they nonetheless

1 asserted that they were in the chain of title to effect  
2 an automatic stay of a foreclosure.

3 All of them were filed either on the eve of  
4 foreclosure or on the day of foreclosure and several of  
5 them, Your Honor, and the history of the case as  
6 recited by the Bankruptcy Court in its opinion, were  
7 dismissed by local rule because either the debtor  
8 Montalvo or his principal entity did not file required  
9 filings to perfect the petition that had been placed  
10 before the Court.

11 What the Eastern District of New York said,  
12 Your Honor, was that the uncontroverted record of the  
13 filings and the lack of any good faith prosecution of  
14 the cases allows this Court to draw a permissible  
15 inference and find that the incident petition was part  
16 of a scheme to delay, hinder, and defraud HSBC.

17 HSBC was the creditor at that time. You have  
18 the same uncontroverted record before you, Your Honor,  
19 the Amendolas have not come before you today and said  
20 that there is anything incorrect about the history of  
21 these proceedings.

22 And I would point out, Your Honor, that the  
23 Bankruptcy Court in Montalvo said, "a lack of good  
24 faith prosecution of the cases." It doesn't matter  
25 whether they were reorganizations or Chapter 7s.

1           There must be an intent, when you place  
2   yourself before this Court, not just to avail yourself  
3   of the jurisdiction of this Court but to follow through  
4   with the process that is afforded and the process that  
5   is required of bankruptcy debtors to place themselves  
6   before the jurisdiction of this Court.

7           The principals, Your Honor, the Amendolas  
8   specifically and their entity Brevon Development have  
9   wholly failed to do so. Your Honor, this does rise to  
10   the nature of an effort and a pattern of conduct to  
11   delay, hinder, or defraud Access National Bank.

12           We believe that relief is appropriate under  
13   (D) (4) and we ask the Court today to make that relief  
14   binding as against any future filing of the property  
15   for a period of one year.

16           We will also ask Your Honor that the Court  
17   waive the 14 day stay under Rule 4001 so that Access  
18   can begin and commence foreclosure proceedings  
19   immediately and not be further delayed.

20           This is a case, Your Honor, where these  
21   debtors have had the opportunity ad nauseam to deal  
22   with the issues that exist between them and the bank.

23           The bank has tried more than necessary to meet  
24   them more than halfway. Last October, the bank thought  
25   it had a deal.

1           The Amendolas came in and said, "we've got a  
2   source of money, we're going to help give you some  
3   money." The bank says, "great, but we're not going to  
4   get caught in that same position."

5           So at that point in time, Your Honor, Exhibits  
6   17 and 18 were signed and it is of particular moment  
7   and importance that those documents were signed by each  
8   and every one of the petitioning creditors, not just in  
9   this case but in the prior case that was invoked  
10   against RMAA claiming that the members themselves had  
11   the authority to file and asserting that the entity was  
12   a partnership.

13           Each and every one of those petitioning  
14   creditors, Your Honor, agreed that RMAA would be  
15   created and that Acme would be appointed as a manager  
16   and that no bankruptcy could be filed without Acme's  
17   consent.

18           Not just that it's a voluntary petition, Your  
19   Honor, because that's --

20           THE COURT: All right, I think I've heard  
21   enough.

22           MR. O'DONNELL: Okay.

23           THE COURT: Mr. Forest, do you want to  
24   respond?

25           MR. FOREST: Yes. Your Honor, I just want to

1 address, I want to comment about the (D) (4) factors.

2 The statute says "delay, hinder, and defraud" and I  
3 don't think that there's been anything presented to the  
4 Court to show an effort to defraud Access.

5 Looking further down Section four it does, as  
6 a part of the defraud it talks about transferring all  
7 or part of the ownership of the property without  
8 creditors or Court approval.

9 We haven't done that so I don't want to, I  
10 just think that (D) (4) does not necessarily present  
11 grounds for relief. But to address and just to borrow  
12 from Mr. O'Donnell's words he says that bad faith is  
13 shown when there's no prosecution, when there's no  
14 follow-through.

15 There's, I hesitate to say there's no evidence  
16 that there wasn't any follow-through in the first  
17 involuntary. That was certainly dismissed and I don't  
18 want to go too deep into that but I thought that there  
19 was authority for that involuntary filing and I'll just  
20 leave it right there because I know that's not before  
21 this Court.

22 But I don't think it's appropriate for them to  
23 say that there was no follow-through on that first case  
24 when they moved to dismiss it.

25 I also don't think it's appropriate for them

1 to say there's no follow-through here when we're not  
2 being given an opportunity to follow through.

3 I think the strongest evidence that I have to  
4 factually distinguish our case and the history of the  
5 Amendolas, from the cases that have been cited to the  
6 Court and I'm not going to hide from it.

7 I wish that those other Chapter 7 proceedings  
8 hadn't been filed but the most important point to  
9 distinguish is that the Amendolas have paid  
10 approximately \$1,000,000 to Access National Bank  
11 following all of that.

12 Mr. Amendola testified as to the approximately  
13 \$900,000. I didn't write down the number but the  
14 approximately \$900,000 that was paid in the course of  
15 2009.

16 He's testified that the principal balance  
17 alone was curtailed by some \$295,000. He's testified  
18 that following the August forbearance agreement that  
19 they paid approximately \$500,000 to Access National  
20 Bank so this, when I say "this case" I mean the  
21 circumstance here is one where RMAA may be foreclosed  
22 from filing the involuntary petition because of the  
23 language in there.

24 But where RMAA is basically coming, I don't  
25 want to say helpless to the Court but coming to the

1 Court to try and get just a little bit of relief.

2 Now the little bit of relief that we need is  
3 that -- and I use the term "we" -- that RMAA is having  
4 incredible difficulty selling this property and they're  
5 having difficulty because the purchasers that they deal  
6 with are very sophisticated folks.

7 This is, don't try to be boastful here but  
8 this is the largest house on the market in Loudoun  
9 County and the kind of people who buy this like to  
10 investigate things.

11 Invariably they come into contact with Access  
12 National Bank and I don't mean to suggest any ill  
13 intent on the part of the bank but the bank gives them  
14 information as to what's going on and what the status  
15 of things are.

16 And those folks who otherwise would have to  
17 purchase the property through the Amendolas at what we  
18 believe is a fair value and then starting to think, if  
19 I just wait a little bit it will be on the market for  
20 substantially less through a foreclosure.

21 So what RMAA needs is just a little bit of  
22 breathing space. I wish I could tell the Court that  
23 RMAA could file a plan and consummate a sale within --  
24 or file a plan within 90 days that shows the  
25 probability of a sale being consummated.



1 I just don't know that I can do that. But I  
2 am comfortable that RMAA is going to be able to  
3 effectuate a refinance of this loan and I don't  
4 necessarily want to get into the hearsay issues.

5 And I'm not trying to reargue what Your Honor  
6 has already ruled but I have comfort that -- I'm sorry,  
7 I am comfortable that the folks at RMAA have at their  
8 disposal a few hundred thousand dollars and I'm not  
9 trying to be flippant when I say that, that can be used  
10 to either curtail this note or that can be packaged in  
11 as a part of a refinance.

12 Mr. Amendola has testified that the payoff  
13 figure that was again, not admitted into evidence on  
14 that letter of some number just well in excess of  
15 reason, isn't the actual number that he's dealing with.

16 And what this really comes down to, Your  
17 Honor, and unfortunately I think that this is the song  
18 that the Court hears from every debtor is, give me a  
19 chance.

20 And what we would propose, Your Honor, is just  
21 to be given an opportunity to provide adequate  
22 protection payments. I know that Counsel suggests and  
23 is vehement that there's no equity in the property.

24 And just to address the question of equity in  
25 the property I would draw to the Court's attention that

1 we introduced evidence of the contracted \$4.1 million.

2 And Mr. Shoemaker even outlined the break  
3 points for the four various bidders and I'm sorry I  
4 don't have the number committed to memory but the final  
5 sale price that was knocked down was three-some million  
6 dollars.

7 And I submit that it is, I don't want to call  
8 it "incredible" but difficult to reconcile the fact  
9 that a foreclosure sale would yield 50 percent more  
10 than the appraised price that Mr. Ogden -- and I'm  
11 sorry if I don't have his name correct -- came up with.

12 So Your Honor, our basic premise is if we can  
13 have -- and I don't necessarily say breathing space to  
14 come through with the sale because I'd like there to be  
15 a sale but I can't promise that.

16 But what I am comfortable with is that if we  
17 be allowed to make adequate protection payments we can  
18 have this property refinanced in very short order.

19 Again, Mr. O'Donnell will say that there's no  
20 way that's going to happen. They owe so much more on  
21 this second trust that it will just never work.

22 And again, the song that the Court always  
23 hears but in this case is the Amendolas are willing to  
24 dedicate, not personal assets because I don't know  
25 where -- I have an understanding of where this money is

1 coming from -- but if they're willing to put their  
2 money where their mouth is and simply ask for nothing  
3 more than an opportunity to do that.

4 And I know that the Court has discretion to  
5 determine will final relief be granted to day and I  
6 understand that that's a possibility that may happen.

7 But the Court, I know has also given debtors  
8 an opportunity to try and reorganize it and we'd simply  
9 like an opportunity to do that.

10 We're more than able to make the adequate  
11 protection payments. I'm not going to lay conditions  
12 on it but I've pointed out that the note payment that  
13 was originally called for in the note was at 16,000 and  
14 some odd dollars.

15 I know the Amendolas had made higher payments  
16 than that and if we're looking at adequate protection,  
17 I had raised to the Court in my papers and even their  
18 exhibit, the payoff statement shows the per diem  
19 payment of \$500 a day.

20 I can only assume that that equates to around  
21 \$15,000 a month in interest. I'm sure it's a little  
22 bit more but it comes very close to the \$16,000 payment  
23 that was set forth in the note.

24 I don't know exactly the interest rate that's  
25 used to calculate that \$500,000 and I don't want to

1     burden the Court with it because if they say \$509 is  
2     the per diem then we can provide that adequate  
3     protection.

4             But -- and I guess just to get back to the  
5     issue of whether bad faith is cause under (D) (1). I  
6     don't think that I can argue that bad faith would be  
7     cause under (D) (1) and again I wish we didn't have all  
8     these prior bankruptcy filings, all these Chapter 7s.

9             But I think that those prior bankruptcy  
10    filings, I would certainly hope would be washed clean  
11    by a number of factors. Again, the \$1,000,000 that  
12    they paid, the \$1,000,000 that the bank accepted.

13            I don't suggest they waived their rights but  
14    there's \$1,000,000 that changed hands. In the two  
15    cases that Counsel cited there were not \$1,000,000 that  
16    were paid to -- and I don't suggest to make amends but  
17    to try and bring things current.

18            And also the last two times that the bank  
19    attempted -- I shouldn't say the last two. The March  
20    date, they voluntarily withdrew that. They had every  
21    right to be upset at that point and I shouldn't say  
22    "upset" but they had every right to go forward.

23            They had demanded \$104,000 and a contract. We  
24    provided \$80,000 and a contract. They had every right  
25    at that moment to knock the sale down and proceed but

1 they didn't do that.

2 Do I suggest that that's a waiver? No. But  
3 I'm more relying on the fact that there was \$80,000,  
4 another \$80,000 that was paid to try and keep this  
5 project going.

6 And I would respectfully submit to Your Honor,  
7 that the Amendolas wouldn't be here trying to rescue  
8 this thing if they thought it was all a foregone  
9 conclusion.

10 We just want an opportunity to make adequate  
11 protection payments and I understand the Court can put  
12 us on a very short leash but we would just like an  
13 opportunity to do that.

14 THE COURT: Did you want to add any closing  
15 comments?

16 MR. O'DONNELL: No, sir.

17 THE COURT: All right, thank you.

18 Well, it goes without saying that whenever we  
19 find a debtor and creditor, particularly banks that are  
20 seeking to foreclose in this Court, that there's always  
21 dismay, possibly shock that we're in this Court because  
22 contractual relationships of the parties had  
23 voluntarily entered into at the beginning of the  
24 transaction have been frustrated.

25 Not because of the filing of the bankruptcy

1 but for other reasons and now they find themselves  
2 seeking some authority to do something in the  
3 Bankruptcy Court, perhaps to reorganize it to maximize  
4 recovery out of the property.

5 So to the extent that the bank is disappointed  
6 or something like that, that is pretty standard fare.  
7 No one wants to lose money. No one wants their  
8 contract not to form and that includes the debtors.

9 But that's not the thing that runs or drives a  
10 decision. What I do think, though, that is significant  
11 what Mr. O'Donnell started out with is the history of  
12 this particular property and not just the frustration  
13 of foreclosures that did not go forward but the manner  
14 in which they did not go forward.

15 The one that did not go forward because of  
16 agreement by the parties I think is neither a plus nor  
17 minus to either side. It was an effort to work things  
18 out.

19 Both sides obviously thought that there was  
20 some prospect. That prospect was more valuable than  
21 insisting upon the strict reading of their rights at  
22 that time.

23 In those circumstances I can't hold that  
24 either in favor of or against either party unless  
25 there's some active fraud or misrepresentation which

1 had not been shown.

2 But the difficulties with the prior bankruptcy  
3 filings, and that's the difficulty with this.  
4 Effectively this debtor has had more than a year or I  
5 don't remember off the top of my head the date of the  
6 first filing but it's approximately a year, I think,  
7 something like that, of relief from the -- by the  
8 bankruptcy code.

9 And in each instance the filing has delayed an  
10 imminent foreclosure and by the time the filing is  
11 cleared and the bank is ready to go forward again we  
12 repeat the process.

13 In each instance there's no effort, successful  
14 effort to reorganize or move the ball forward and I  
15 think that that's the difficulty here.

16 The filing by Brevon, the guarantor is plainly  
17 wrong. That did not activate or implement the Section  
18 362 stay. They're a guarantor. The Fourth Circuit  
19 spoke about that in the early '90s, in re: Jarris  
20 where the fact that it may have consequences on a  
21 guarantor does not mean that the automatic stay is  
22 itself not implicated by that.

23 In that case Mr. Jarris was a guarantor of a  
24 loan and another property was going to foreclosure and  
25 questioned, just as the facts in this case and the

1 Court of Appeals says that stay did not arise because a  
2 guarantor files bankruptcy.

3 I can't see in mitigation on a Trustee, not a  
4 bankruptcy Trustee but under a deed of trust you want a  
5 fair and open sale. You want no encumbrances or  
6 clouds.

7 While I think that the law is clear on that,  
8 that that is not a cloud he was uncertain of that at  
9 that time and prudence suggests that he take another  
10 look at it and there wasn't enough time for him to get  
11 a thorough handle on these matters before he filed.

12 And as he said there could have been a  
13 transfer of the property or something like that and the  
14 issue is not as suggested here provide any evidence  
15 that you filed because once you're put on notice of it,  
16 the stay is effective immediately upon filing whether  
17 you know about it or not.

18 And once one is put on notice one needs to  
19 take some reasonable care to exercise some diligence to  
20 satisfy himself that it is or is not and the timing of  
21 the filing can frustrate that.

22 But it's the four of them altogether. The  
23 filing as a corporation is an interesting situation.  
24 Judge Mitchell says you can't do it because it's not a  
25 partnership, it's a corporation.



1 I understand that there's a certain amount of  
2 duality of an LLC. We'd like our cake and to eat it  
3 too and basically we've gotten it with having a past  
4 due tax entity with a corporate limitation of liability  
5 and the parameters are not entirely clear on that.

6 But I think his decision was plainly right.  
7 It is for purposes of bankruptcy code, not a  
8 partnership and the ability of a general partner to  
9 prevent a bankruptcy is different than a manager.

10 Although clearly because of the type of entity  
11 there's some overlap. I'm not sure if there are any  
12 Court of Appeals decisions on that out of the Fourth  
13 Circuit but I think the opinion was correct and it was  
14 an improper filing.

15 I don't know that, I can't deduce from the  
16 evidence presented that it was a bad faith filing  
17 because of that. I do see that the subsequent filing  
18 is members as creditors.

19 That was not gone into here but that would  
20 have been an interesting point to develop. Maybe they  
21 are admitted creditors and if that's the case they  
22 should have filed as creditors the first time.

23 The possibility exists that they are not in  
24 fact creditors and that they have concocted some sort  
25 of loan and the petition should be dismissed for

1 whatever reason, for the reason that they're not the  
2 proper creditors.

3 That hasn't been gone into but I do see the  
4 sequence of the four, the timing of the foreclosures,  
5 the relief that the debtor has obtained over this time,  
6 and I think that that's a negative to start off with.

7 If this had been the first filing it would be  
8 a different case altogether. If there had been no  
9 opportunity under bankruptcy to seek or try to  
10 reorganize, that would be a different circumstance.

11 But effectively as a matter of practicality  
12 there's been about a year's worth of relief under the  
13 bankruptcy code but not in the manner in which it was  
14 intended to be exercised.

15 The other issues of evidence that I think are  
16 interesting to me and worthy of comment are Mr.  
17 Harvill's indication of the auction at the March sale.

18 We haven't had enough evidence in enough cases  
19 to understand appraisals as they are in the market  
20 today. In a normal fully functioning market the  
21 appraisers and the profession and the manner in which  
22 they go, I think give a very reliable indicator of  
23 value.

24 The comps are the best indicator. Those are  
25 willing sales by willing, people willing to sell and a

1 person willing to buy, neither under any compulsion and  
2 the market is operating fully and completely.

3 And I think that there it's easy -- not  
4 necessarily easy but it's pretty straightforward on how  
5 to do it and the results are pretty reliable.

6 Here in the last couple of years, particularly  
7 we saw it starting with the condos. There was an  
8 iconic photograph in the newspaper, the Washington Post  
9 several years ago with, a park bench for lack of a  
10 better term.

11 It wasn't a park. It was probably a Metro bus  
12 bench with about 18 lock boxes locked onto it for the  
13 various condominium apartments in that particular  
14 building.

15 That market is not working. There's an  
16 abundance of sales and they're just not selling and you  
17 have to be careful about a circumstance where  
18 properties are on the market and there are no sellers  
19 because the market isn't working.

20 The second part of the market that is usually  
21 is the top end because for practical reasons people  
22 don't have the money to do it or in a situation that  
23 we've had in the last year to 18 months, there are a  
24 lot of lenders out there that are not making the loans  
25 that might have been made otherwise.

1           And that clearly depresses them. They have  
2   low interest rates but if you're not making loans for  
3   these sorts of things you've got a double whammy.

4           People don't have the money, they don't have  
5   the income. The lenders aren't making the loans and  
6   you have an indicator there that perhaps the market  
7   isn't functioning.

8           So you need to take care with the appraisals  
9   that are coming in. Now this appraisal came in the  
10   range of about the loan but what I find interesting is  
11   that at the auction the bank bid its note and at that  
12   point it stopped.

13           If it gets a dollar more it's out and that's  
14   where it should stop for the benefit of its depositors  
15   and its entity. Its only interest is not to invest in  
16   real estate but to get its money back and anyone who  
17   bids a dollar over the total debt due is going to get  
18   the property.

19           The second bidder who was a third party,  
20   dropped out at \$2.6 million, was Mr. Harvill's  
21   testimony. That is closer to the appraisal. The next  
22   builder was a subordinate lien holder who dropped out  
23   at \$3.3 million.

24           Well, his principal note was a million. The  
25   bank is owed \$2.3 million and that's just about the

1 right place for a second trust holder to drop out.

2 Once -- he's going to get his principal back.

3 If he wants to go forward he can go forward a little

4 bit more but at a dollar over that the first trust is

5 paid, he's got his money back, and whether it got any

6 interest in the past and he's willing to eat it, that's

7 his decision.

8 He could go higher and still get a bid paper

9 but it's interesting that it's about a million over

10 what the bank's bid was.

11 And then the third bidder is an insider and

12 it's easily concluded that that bid was to buy time

13 than to seriously intend to close on the contract

14 because that was by an LLC to be formed and one of the

15 numbers at least was an insider of this entity.

16 Why it didn't go to closing, whether it was

17 because the funding fell through or it was an intention

18 to buy time for basically an extension fee of the

19 deposit. I don't know.

20 But when I look at those break points in the

21 bidding I think that they corroborate somewhat and

22 quite significantly the appraisal that came in today.

23 I do recognize that auctions are likely to be

24 depressed and the question obviously that would be

25 opened is to what extent?

1 But I'm satisfied that the appraisal is  
2 substantially correct, based on what we've had. It  
3 might, in today's market that's what may well come if  
4 the market recovers but it takes time to recover.

5 The value may still be there and the idea of  
6 it is, looking at the flash crash that we had a few  
7 months ago on the stock market, for a few hours the  
8 market was really down and there was a lot of stock  
9 that had lost 80 or 90 percent of the value.

10 Well, it really hadn't. The true value, if  
11 you looked at the book and the business of these  
12 entities was still there but something happened and the  
13 market froze up and there was a break in the market  
14 which resulted in that.

15 The stock market can recover as it did, within  
16 hours. The real estate market in these cases takes  
17 quite a bit longer to do it so you deal with the  
18 concept of what is it's real value versus what you can  
19 get today.

20 Well, what you can get today is probably the  
21 real value certainly today but the condition of the  
22 market and those things certainly has an impact on it  
23 and people's perception of what the house is worth and  
24 how they would finance it to come in.

25 But I look at that testimony and I think that

1 we really do come to a reasonably understood valuation  
2 of the property, tested by the market. Certainly a  
3 depressed auction market is out there.

4 But the testimony is that or the suggestion at  
5 least, the argument and some testimony is that this  
6 house isn't going to sell well because it can be bought  
7 at auction, that foreclosure will at least lessen it's  
8 worth.

9 Well, it was put up and that market was tested  
10 and that's what it came in to be. I don't know that  
11 anyone out there would expect it to be significantly  
12 different than that.

13 So I think that that's where you get the value  
14 that is there. There was very brief testimony as to,  
15 and the question I had is, well, you've had a year.  
16 What are you going to do in the next few months?

17 Why hasn't there been refinancing? And the  
18 testimony by the debtor's representative was quite  
19 plainly that we were unsuccessful in trying to  
20 refinance over the last year.

21 And there's no indication of why things have  
22 changed, that if I were to give more time whether it a  
23 week, a month, or six months that the refinancing that  
24 could not have been and was not effected in the last  
25 year would be effected now.

1 I recognize that the four individuals or at  
2 least three -- one I think has been discharged from  
3 bankruptcy -- have guarantees outstanding and I think  
4 that that's the motivating effort to keep this in here,  
5 is to minimize the exposure on the guarantors.

6 But they've had a year to come up with their  
7 own money, to come up their own refinancing, or  
8 whatever other mechanism necessary that they now seek  
9 to achieve in a Chapter 11 and a year is sufficient  
10 time for that.

11 So basically what I'm looking at is, there's  
12 been a year worth of effort or a year worth of a  
13 possible effort which did not come to fruition. I see  
14 no significant changes going forward and I see the  
15 likelihood of reorganization in these circumstances to  
16 be remote and unlikely.

17 I am concerned about the contract. Of course  
18 it did not go to fruition. It was with a realtor and I  
19 don't know that, from the realtor whether it was from  
20 her personal use to flip it, whether she had someone  
21 she thought would buy it.

22 I don't know what the circumstances are but it  
23 did effect for a fee, a further delay in the  
24 foreclosure that gave an opportunity to market it  
25 again.



1           So I'm not sure what that means but the  
2 contract clearly did not come to fruition and while it  
3 was written, it was signed, it was sealed, it went no  
4 further than that.

5           So notwithstanding that there have been people  
6 who have discussed it none of those offers have  
7 resulted in contracts and I don't think that there's a  
8 likelihood of recovery.

9           I do think there's bad faith because of the  
10 nature of the manner in which this has been handled  
11 from the beginning and the inappropriate way. As I  
12 said if this had been at least a Chapter 11 at the  
13 beginning as Mr. Forest suggested it would be nice to  
14 have had this, the first one.

15           You probably would have gotten a reasonable  
16 period of time to attempt to reorganize. I think  
17 you've had that opportunity albeit in a back door way  
18 of doing it.

19           It is true, Mr. O'Donnell, I think that (D) (4)  
20 is in the conjunctive. If you compare that to the  
21 fraudulent conveyance which is in the disjunctive I  
22 think it is quite plain.

23           If it were in the disjunctive I don't have any  
24 question but for the fact that it would be applicable  
25 here because the effect of these serial filings has

1     been to delay the inevitable foreclosure.

2                   But nonetheless I do have the authority under  
3     105(a) to impose the same sanction on the property and  
4     I will do so. I think this is a case where a  
5     bankruptcy is no longer the right forum for this.

6                   And whatever the parties non-bankruptcy  
7     contractual rights or remedies are is where the parties  
8     should be focusing their attention on.

9                   Bankruptcy Court has been used, I think  
10    misused but however it happened you got the benefits of  
11    a years' worth of bankruptcy and I think that that's  
12    about all that we should do in these particular  
13    circumstances.

14                  I will grant the motion for relief from stay.  
15    It will be an in rem order for one year that with any  
16    bankruptcy stay not affecting this particular property.

17                  I note in that that although there are  
18    provisions for a second and third filing and of how  
19    they effected an automatic stay they're directed toward  
20    those instances, principal and individuals.

21                  When an individual files a second or third  
22    filing within a year or the spouse does, effectively we  
23    have the same thing although we're not within the same  
24    family relationship.

25                  But all of these parties who have filed are

1 related and I think that the same intent and purposes  
2 of those provisions that deal with individuals that are  
3 affected and the circumstances in which we find  
4 ourselves here today.

5 I respect the fact that this was brought on an  
6 expedited basis and Mr. Forest, you were not able to  
7 get another appraisal. Your proffer of a two year old  
8 appraisal is \$5.2 million, is well worth proffering to  
9 the Court and as you properly note I can't accept it  
10 because it's way out of date.

11 I also note the testimony of the debtor,  
12 although Mr. O'Donnell interrupted him before he got  
13 too far which was that they have effected a tax  
14 assessment readjustment downward because of the change.

15 But we know that the properties have decreased  
16 in value over the last two years and it's just across  
17 the board, and these are the top end so that is another  
18 indicator that it's lower than the \$5.2 million and the  
19 question is how much lower.

20 But I don't think that giving you more time  
21 would bring you into enough to satisfy all the debts  
22 and you'd still need something else to do that.

23 And I think that, I can't think of any  
24 evidence that you could present at this point that  
25 would, if I gave you time to prepare further that would

1 be productive in the case and that's one of the reasons  
2 I'll grant the relief today.

3 (Whereupon, at 5:15 p.m. the proceedings were  
4 concluded.)

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